

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL 1463

By: Wyrick of the Senate

and

Glenn of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to environment and natural resources; amending Section 2, Chapter 371, O.S.L. 2004 (10 O.S. Supp. 2005, Section 7602), which relates to the Lead-Impacted Communities Relocation Act; modifying legislative findings; expanding purpose of act; Section 3, Chapter 371, O.S.L. 2004 (10 O.S. Supp. 2005, Section 7603), which relates to relocation assistance; authorizing grants to certain persons for relocation due to subsidence risk; stating eligibility; limiting payments to one per household; modifying uses of certain funds; removing certain application assistance deadline; stating funds shall be expended on certain priority basis; amending Section 4, Chapter 371, O.S.L. 2004 (10 O.S. Supp. 2005, Section 7604), which relates to enforcement of certain restrictions; modifying restrictions on certain reoccupation; amending Section 5, Chapter 371, O.S.L. 2004 (10 O.S. Supp. 2005, Section 7605), which relates to causes of action; prohibiting certain claims or right of action; prohibiting judicial review of certain determinations; terminating the Ottawa Reclamation Authority upon certain date; providing for transfer of certain assets and records; repealing 45 O.S. 2001, Section 801, as amended by Section 1, Chapter 17, O.S.L. 2003, Sections 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, and 815 (45 O.S. Supp. 2005, Section 801), which relate to the Ottawa Reclamation Authority; providing for codification; providing for recodification; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 2, Chapter 371, O.S.L. 2004 (10 O.S. Supp. 2005, Section 7602), is amended to read as follows:

Section 7602. A. The Legislature recognizes that historic lead and zinc mining operations have caused severe environmental degradation in areas of this state. The Legislature further recognizes that this degradation has caused the United States Environmental Protection Agency to place large areas within the state, including entire municipalities, on its Superfund National Priorities List of the most seriously contaminated sites in the nation.

B. The Legislature finds that lead poses a unique threat to children six (6) years of age and younger. During this period of their development children are particularly vulnerable to neurological damage caused by lead exposure. The effects of this childhood exposure can continue throughout their lives.

C. The Legislature hereby finds and determines that, as shown by studies conducted by the State Department of Health and the United States Indian Health Service, children six (6) years of age and younger, living in the vicinity of these former mining areas, exhibit blood lead levels above the thresholds considered dangerous to human health, and continued exposure of such children to lead constitutes a significant danger to the health of such children in the future. Further, the Legislature hereby determines a need exists to remedy the problem, by providing incentives for families with children six (6) years of age and younger to relocate outside the area of contamination.

D. The Legislature further recognizes that much of the damage caused by historic lead and zinc mining has resulted in a serious subsidence risk in the affected areas. The United States Army Corps of Engineers has identified municipalities within those areas where the risk of subsidence poses an imminent risk to the public and the Legislature therefore finds that a need exists to remedy this problem by expanding the purpose of this act to provide incentives

for those owning or leasing property in the affected areas to relocate to areas of greater safety.

SECTION 2. AMENDATORY Section 3, Chapter 371, O.S.L. 2004 (10 O.S. Supp. 2005, Section 7603), is amended to read as follows:

Section 7603. A. The Department of Environmental Quality is hereby authorized to make grants, from monies appropriated for that purpose, to state beneficiary public trusts serving communities affected by historic lead and zinc mining and located within the boundaries of federal Superfund sites; provided, that any trust receiving such a grant shall accept the following grant conditions:

1. Funds shall be used to assist individuals or married couples living within the most affected area of the site and who are parents or legal guardians of children six (6) years of age and younger. For purposes of the Lead-Impacted Communities Relocation Assistance Act, "most affected area" shall mean the communities in which lead poses the greatest threat to children's health and shall include a reasonable buffer area around such communities. To be eligible for assistance under this subsection an individual or married couple shall have both:

- a. continually resided in the most affected area of the site since December 1, 2003, and
- b. on December 1, 2003, either been pregnant or had residing with them a child or children six (6) years of age and younger;

2. For those eligible for relocation assistance who have rented their living quarters since December 1, 2003, and who can produce a valid rental contract or other proof of rental arrangement, assistance shall be in an amount equal to the average cost of twelve (12) months of rent for comparable housing elsewhere in the county. The trust shall provide such assistance in periodic payments and not in a single lump sum. In addition, eligible individuals or married

couples shall receive reimbursement up to One Thousand Dollars (\$1,000.00) for payment to a company in the moving business for at least two (2) years or for reimbursement of actual moving expenses as demonstrated by receipts. Recipients must agree, prior to accepting such assistance, that they will not again reside within one-half (1/2) mile of the most affected area of the site until the State Commissioner of Health formally determines that the area is safe for children six (6) years of age and younger;

3. For those individuals and married couples eligible for relocation assistance who have owned their homes since December 1, 2003, the trust shall purchase their homes for an amount equal to the average cost of comparable housing elsewhere in the county. In addition, such individuals shall receive reimbursement up to One Thousand Dollars (\$1,000.00) either for payment to a company in the moving business for at least two (2) years or for reimbursement of actual moving expenses as demonstrated by receipts. Recipients must agree, prior to accepting such assistance, that they will not again reside within one-half (1/2) mile of the most affected area of the site until the State Commissioner of Health formally determines that the area is safe for children six (6) years of age and younger;

4. In determining the purchase price of a recipient's home, the trust shall deduct any amounts received by the recipient in compensation for damage to the home caused by remedial action on the property; and

5. Funds shall also be used to assist landlords whose tenants take advantage of the relocation assistance provided in paragraph 2 of this subsection. Landlords shall be eligible for an amount equal to twelve (12) months of rent at a monthly rate equal to the average monthly rent received by the landlord for the vacated unit over the previous twelve (12) months. Recipients of such assistance must agree, prior to accepting such assistance, that they will not permit any family with children six (6) years of age and younger to occupy

any vacated unit until the State Commissioner of Health formally determines that the area is safe for children of such an age.

B 6. The trust shall agree to place a restriction which shall run with the land on the deeds to all property obtained pursuant to paragraph 3 of subsection A of this section providing that the property may not be occupied by children six (6) years of age and younger until the State Commissioner of Health formally determines that the area is safe for children of such an age.

B. Upon the effective date of this act, the Department of Environmental Quality is authorized to make grants to state beneficiary public trusts serving communities affected by historic lead and zinc mining and located within the boundaries of federal Superfund sites; provided that any trust receiving such a grant shall accept the following conditions:

1. Funds shall be used to assist those persons owning or renting property within the area of greatest subsidence risk. For purposes of this act "area of greatest subsidence risk" shall mean the communities in which subsurface lead and zinc mine caverns pose the greatest threat to public safety and shall include a reasonable buffer area around such communities;

2. To be eligible for rental assistance under this subsection an individual must have continually resided in the area of greatest subsidence risk since January 31, 2006. For those eligible for relocation assistance who have rented their living quarters since January 31, 2006, and who can produce a valid rental contract or other proof of rental arrangement, assistance shall be in an amount equal to the average cost of twelve (12) months of rent for comparable housing elsewhere in the county. The trust may, in its discretion, provide such assistance in periodic payments rather than in a single lump sum. In addition, eligible individuals may receive up to One Thousand Dollars (\$1,000.00) for moving expenses. Recipients must agree, prior to accepting such assistance, that they

will not again reside within the area of greatest subsidence risk until the Secretary of the Environment determines that the area is safe for habitation;

3. For those individuals eligible for relocation assistance under this subsection who own homes the trust shall purchase such homes for an amount equal to the average cost of comparable housing elsewhere in the county. In addition, such individuals may receive up to One Thousand Dollars (\$1,000.00) for moving expenses.

Recipients must agree, prior to accepting such assistance, that they will not again reside within the area of greatest subsidence risk until the Office of the Secretary of the Environment determines that the area is safe for habitation;

4. To be eligible for commercial rental assistance under this subsection an individual or legal entity must have continually operated in the area of greatest subsidence risk since January 31, 2006. For those eligible for relocation assistance who have rented their business or nonprofit organization premises continually since January 31, 2006, and who can produce a valid rental contract or other proof of rental arrangement, assistance shall be in an amount equal to the average cost of twelve (12) months of rent for comparable premises elsewhere in the county. The trust may, in its discretion, provide such assistance in periodic payments rather than in a single lump sum. In addition, such businesses or organizations may receive up to Two Thousand Dollars (\$2,000.00) for moving expenses. Recipients must agree, prior to accepting such assistance, that they will not again operate within the area of greatest subsidence risk until the Office of the Secretary of the Environment determines the area is safe for occupation;

5. For those individuals or legal entities eligible for relocation assistance under this subsection that operate businesses or nonprofit organizations in structures they own which are located in the area of greatest subsidence risk the trust shall purchase the

property for an amount equal to the average cost of comparable commercial property elsewhere in the county. In addition, such businesses or organizations may receive up to Two Thousand Dollars (\$2,000.00) for moving expenses. Recipients must agree, prior to accepting such assistance, that they will not again operate within the area of greatest subsidence risk until the Office of the Secretary of the Environment determines the area is safe for occupation; and

6. All other owners of real property in the area of greatest subsidence risk may be eligible under this subsection to sell their property to the trust for an amount equal to the average cost of comparable property elsewhere in the county.

C. Payments made pursuant to the provisions of this act may be issued to any eligible individual, married couple or head of household, provided not more than one payment agreement shall be provided per eligible residential or commercial unit.

D. Participation in the assistance program shall be voluntary. No person shall be required to relocate under the provisions of this act.

~~D.~~ E. In addition to the relocation assistance program described in ~~subsection~~ subsections A and B of this section, funds granted to the trust may be used for the following purposes:

1. To provide grants to municipalities, public trusts, or other public entities operating utility systems located within the most affected area of the site in order to lessen the debt burden on such entities as a result of the relocation of families pursuant to this act. The amount of such grants shall be based on the outstanding debt of such entities and the proportion that the number of persons relocated bears to the total population of the community served by such entity; and

2. To benefit public school districts, public trusts, and other public entities located within the most affected area of the site or area of greatest subsidence risk;

~~F.~~ F. Real property acquired by the trust pursuant to the relocation assistance provisions of this act may be utilized or disposed of in the manner that the trust determines shall best serve the public interest.

~~F.~~ G. A trust receiving a grant from the Department of Environmental Quality shall be authorized to establish appropriate procedures for eligible residents to apply for the relocation assistance described in this section; provided, however, that such a trust must set a deadline requiring eligible residents to submit their initial application for assistance ~~within four (4) months of the effective date of this act.~~ The trust is further authorized to make reasonable use of grant funds for the administration of the relocation assistance program.

~~G.~~ H. In addition to the expenditure of funds according to the provisions of this act, a trust receiving a grant from the Department of Environmental Quality, shall be authorized to seek and expend funds from any other source, whether public or private, to further the purposes of the trust. The funds granted to a trust by the state shall be transferred in periodic payments rather than a single lump sum.

~~H.~~ I. Prior to determining what constitutes the most affected area or area of greatest subsidence risk, the trust shall consult with the Department of Environmental Quality, which shall provide a recommendation regarding what it believes the boundaries of such an area should be.

~~I.~~ J. Any trust receiving funds under this act shall be subject to the provisions of the Oklahoma Open Meeting Act and the Oklahoma Open Records Act.

~~J.~~ K. At no time shall a majority of the trustees of a trust receiving funds under this act be residents of the most affected area or area of greatest subsidence risk. All trustees shall abstain from participating in any decision in which they have a direct pecuniary interest.

L. The trust shall establish priorities among those seeking assistance, making certain that those at the greatest risk for loss of life and property receive the highest priority. All assistance programs shall be contingent upon the availability of funds.

SECTION 3. AMENDATORY Section 4, Chapter 371, O.S.L. 2004 (10 O.S. Supp. 2005, Section 7604), is amended to read as follows:

Section 7604. The restrictions on reoccupation or reestablishment described in ~~subsection A of Section 3~~ subsections A and B of Section 2 of this act may be enforced by the trust in its own name or by the district attorney or the Attorney General in the name of the State of Oklahoma. Those violating such restrictions shall be liable for penalties in an amount equal to three times the amount they have received from the trust. This penalty shall be in addition to such injunctive relief as the court may order. Proceeds from such actions shall be used by the trust to further the trust purposes identified in ~~Section 2 of~~ the Lead-Impacted Communities Relocation Assistance Act.

SECTION 4. AMENDATORY Section 5, Chapter 371, O.S.L. 2004 (10 O.S. Supp. 2005, Section 7605), is amended to read as follows:

Section 7605. A. Neither the enactment of this act nor the grant of funds to a trust shall create any property right or right in action. The courts shall have no jurisdiction to entertain any action against ~~the~~ a recipient trust, the State of Oklahoma, their officers or agents founded on a claim that the claimant should have received different or better treatment from the trust.

B. The determinations made by the trust pursuant to this relocation assistance program including, without limitation, determinations as to what constitutes the most affected area of the site, the area of greatest subsidence risk, the average rental cost of comparable housing, the average ~~purchase price~~ cost of comparable ~~housing properties~~, the eligibility of any person for assistance, and the determination of the proper amount of such assistance, if any, shall be committed to the sole discretion of the trust based on the information available to it and shall not be subject to judicial review.

~~C. The Department of Environmental Quality may contract with a trust associated with a substate planning district for approval of the recommendations made by the recipient trust.~~

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2207 of Title 27A, unless there is created a duplication in numbering, reads as follows:

On the effective date of this act, the Ottawa Reclamation Authority, created pursuant to Section 801, et seq., of Title 45 of the Oklahoma Statutes, shall be terminated, and all activities of the Authority shall cease, notwithstanding the provisions of the Oklahoma Sunset Law. Upon dissolution of the Authority, its assets and records, in their entirety, shall be transferred to the state beneficiary public trust created pursuant to the Lead-Impacted Communities Relocation Assistance Act.

SECTION 6. RECODIFICATION Section 1, Section 2, as amended by Section 1 of this act, Section 3, as amended by Section 2 of this act, Section 4, as amended by Section 3 of this act, Section 5, as amended by Section 4 of this act, and Section 6, Chapter 371, O.S.L. 2004 (10 O.S. Supp. 2005, Sections 7601 through 7606) shall be recodified as Sections 2201 through 2206 of Title 27A of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 7. REPEALER 45 O.S. 2001, Section 801, as amended by Section 1, Chapter 17, O.S.L. 2003 (45 O.S. Supp. 2005, Section 801), are hereby repealed.

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.

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