ENROLLED SENATE
BILL NO. 1882

By: Treat, Brecheen and Johnson (Constance) of the Senate

and

Jordan, McCullough, Morrissette and Walker of the House

An Act relating to the Governmental Tort Claims Act; amending 51 O.S. 2011, Section 155, which relates to exemptions from liability; adding exemption; defining terms; and providing an effective date.

SUBJECT: Governmental Tort Claims Act exemption

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

SECTION 1. AMENDATORY 51 O.S. 2011, 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 or her 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. <u>Use of indoor or outdoor school property and facilities made available for public recreation before or after normal school</u>

hours or on weekends or school vacations, except those claims resulting from willful and wanton acts of negligence. For purposes of this paragraph:

a. "public" includes, but is not limited to, students during nonschool hours and school staff when not working as employees of the school, and

b. "recreation" means any indoor or outdoor physical activity, either organized or unorganized, undertaken for exercise, relaxation, diversion, sport or pleasure, and that is not otherwise covered by paragraph 20 or 21 of this section;

23. 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.~~ 24. 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.~~ 25. 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.~~ 26. 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.~~ 27. Any claim or action based on the theory of manufacturer's products liability or breach of warranty, either expressed or implied;

~~27.~~ 28. Any claim or action based on the theory of indemnification or subrogation;

~~28.~~ 29. Any claim based upon an act or omission of an employee in the placement of children;

~~29.~~ 30. Acts or omissions done in conformance with then current recognized standards;

~~30.~~ 31. 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.~~ 32. 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;

~~32.~~ 33. Any court-ordered community sentence;

~~33.~~ 34. Remedial action and any subsequent related maintenance of property pursuant to and in compliance with an authorized environmental remediation program, order, or requirement of a federal or state environmental agency;

~~34.~~ 35. The use of necessary and reasonable force by a school district employee to control and discipline a student during the time the student is in attendance or in transit to and from the school, or any other function authorized by the school district; or

~~35.~~ 36. Actions taken in good faith by a school district employee for the out-of-school suspension of a student pursuant to applicable Oklahoma Statutes.

SECTION 2. This act shall become effective November 1, 2012.

Passed the Senate the 6th day of March, 2012.

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Presiding Officer of the Senate

Passed the House of Representatives the 29th day of March, 2012.

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Presiding Officer of the House
of Representatives