

SENATE CHAMBER

STATE OF OKLAHOMA

DISPOSITION

☒ FLOOR AMENDMENT

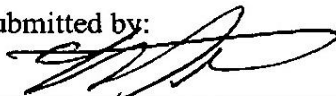
No. 1

☐ COMMITTEE AMENDMENT

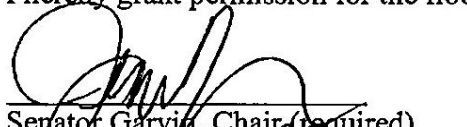
(Date)

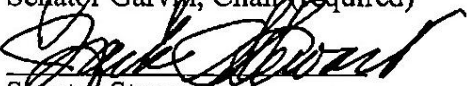
I move to amend Senate Bill 1650 by substituting the attached floor substitute (Request #3646) for the title, enacting clause and entire body of the measure.

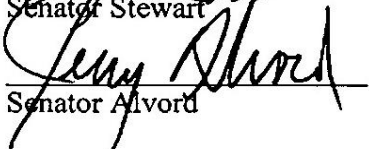
Submitted by:


Senator Lonnie Paxton

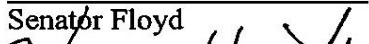
I hereby grant permission for the floor substitute to be adopted.


Senator Garvin, Chair (required)



Senator Stewart


Senator Alvord



Senator Bergstrom



Senator Floyd

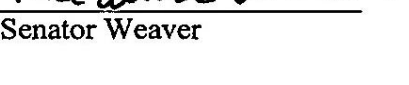

Senator Hamilton

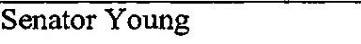

Senator Treat, President Pro Tempore

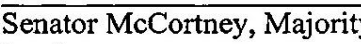

Senator Murdock


Senator Rogers


Senator Seifried


Senator Weaver


Senator Young


Senator McCortney, Majority Floor Leader

Note: General Government committee majority requires six (6) members' signatures.

Paxton-MSBB-FA-SB1650
3/13/2024 8:45 AM

(Floor Amendments Only)

Date and Time Filed: 3-13-24

2:09 pm AK

☐ Untimely

☐ Amendment Cycle Extended

☐ Secondary Amendment

STATE OF OKLAHOMA

2nd Session of the 59th Legislature (2024)

FLOOR SUBSTITUTE
FOR

SENATE BILL NO. 1650

By: Paxton of the Senate

and

Boles of the House

FLOOR SUBSTITUTE

[cities and towns - guidance and criteria
promulgation - notice - conformance standards -
limitations on liability - moratorium - codification
- effective date]

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

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 37-235 of Title 11, unless there
is created a duplication in numbering, reads as follows:

A. As used in this section, "public utility" means a
municipally owned utility providing sewage services through a
sanitary sewer system.

B. The governing body of a public utility shall adopt a plan
that contains any or all of the following components of maintenance
and operation of public utilities, taking into account available
revenue streams to the public utility:

1 1. Mapping and recordkeeping of a sanitary sewer system for
2 maintenance and operation of the system;

3 2. A policy of inspections, cleaning, and root control of sewer
4 lines, that contains the following elements:

- 5 a. an inspection program of sewer lines to determine
6 whether sewage flows are clear, moderately occluded,
7 or severely occluded,
- 8 b. a program of routine maintenance of sewer lines, and
- 9 c. a treatment program for sewer lines identified as
10 having blockages due to root infiltration of which the
11 public utility has notice, with root control through
12 either mechanical or chemical treatments;

13 3. Adoption of a funding availability model that identifies:

- 14 a. the total revenue from ratepayers that can reasonably
15 be expected over a fiscal year,
- 16 b. other funding sources from municipal revenues that can
17 reasonably be expected to be contributed to the
18 sanitary sewer system operations, maintenance, or
19 capital improvements,
- 20 c. external sources of funding from local, state,
21 federal, or tribal entities that could be available
22 for sanitary sewer system operations, maintenance, or
23 capital improvements, and

1 d. bonding capacities, whether revenue bonds or general
2 obligation bonds, that could be available for sanitary
3 sewer system operations, maintenance, or capital
4 improvements.

5 Funding availability models shall be reviewed at least every five
6 (5) years to include a rate study recommending reasonable rates for
7 those connected to the sanitary sewer system; and

8 4. Adoption of a five-year capital improvement plan that
9 considers dedication of funding available to:

10 a. repair or replace sanitary sewer lines that have been
11 identified as severely occluded,

12 b. repair or replace municipal sanitary sewer lift
13 stations necessary for the continued operation of the
14 system, and

15 c. access or purchase equipment to operate the municipal
16 sanitary sewer system serving the citizens of the
17 municipality that are connected to the municipal
18 sanitary sewer system.

19 C. The governing body of a public utility may include in a plan
20 adopted in accordance with subsection B of this section that
21 contains any or all of the following components of maintenance and
22 operation of public utilities, taking into account available revenue
23 streams to the public utility:
24

1 1. A policy of responding to calls for sanitary sewer overflow
2 (SSO) to clear municipal sewer mains, flush with water and deodorize
3 the land upon which SSO has occurred, and remove SSO debris from
4 land upon which SSO has occurred;

5 2. Adoption of a fats, oils, and grease (FOG) ordinance that
6 makes unlawful the improper introduction of fats, oils, or grease
7 from nonresidential entities that are connected to the sanitary
8 sewer system and incorporating pre-treatment regulations adopted by
9 the Department of Environmental Quality for such entities. Public
10 utilities shall periodically notify sanitary sewer system
11 participants and dischargers of the restrictions within this
12 paragraph;

13 3. Adoption of an ordinance requiring new construction or
14 remodels of existing buildings to be connected to the sanitary sewer
15 system, including the installation of a backflow prevention device
16 on the private service line connecting the structure to the sanitary
17 sewer main line; and

18 4. Adoption of a policy that will periodically advise private
19 residential property owners who are connected to the sanitary sewer
20 system of the option to provide additional personal protection
21 through installation of a backflow prevention system on the private
22 service line connecting the property to the sanitary sewer main
23 line. At the discretion of the governing body of the public
24 utility, after considering available funding, private residential

1 owners connected to the sewer system may be offered public
2 assistance with the installation and inspection of backflow
3 prevention devices.

4 D. Periodic advisement as described in paragraphs 2 and 4 of
5 subsection C of this section shall be satisfied by annual
6 publication in a newspaper of general circulation within the service
7 area of the public utility, publication on the public utility
8 sponsored website, or annual inserts in ratepayer monthly utility
9 bills. Nothing in this subsection shall be construed to prohibit a
10 public utility from making notification to ratepayers more often
11 than an annual basis.

12 E. A public utility that is in the process of implementing a
13 plan adopted pursuant to subsection B of this section with a goal of
14 completion and full implementation within five (5) years of the
15 effective date of this act shall be considered in compliance with
16 the provisions of this act.

17 F. The Oklahoma Water Resources Board and any other state
18 agency that provides funding to public utilities for water and
19 wastewater improvements shall ensure that the ranking structure for
20 approval of funding applications accounts for the sustainability
21 efforts of systems that have adopted the plans identified in this
22 section.

23 G. 1. A public utility in compliance with the provisions of
24 this act shall not be liable for a personal injury claim for damage

1 caused by a sanitary sewer overflow, provided that the utility
2 charged with operation of the sanitary sewer system is working to
3 maintain its sanitary sewer system in accordance with the guidance
4 and criteria promulgated by the Board pursuant to subsection F of
5 this section and any criteria or guidelines promulgated by a
6 governmental entity under an interlocal cooperative pursuant to
7 Section 1001 et seq. of Title 74 of the Oklahoma Statutes, as such
8 components are determined by the governing body to be fiscally
9 available considering available revenue streams to the public
10 utility. A municipality qualifying for relief under this section
11 shall not be liable for nuisance claims based on annoyance and
12 inconvenience associated with a sanitary sewer overflow, but nothing
13 in this section shall prohibit a recovery for property damage
14 associated with a sanitary sewer overflow in accordance with The
15 Governmental Tort Claims Act.

16 2. Beginning on the effective date of this act, a five-year
17 moratorium shall be established against nuisance-based tort claims
18 relating to the operation of public sanitary sewer systems for
19 cities and towns working toward implementing the plan described in
20 this section.

21 SECTION 2. AMENDATORY 51 O.S. 2021, Section 155, as
22 amended by Section 21, Chapter 228, O.S.L. 2022 (51 O.S. Supp. 2023,
23 Section 155), is amended to read as follows:
24

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

3 1. Legislative functions;

4 2. Judicial, quasi-judicial, or prosecutorial functions, other
5 than claims for wrongful criminal felony conviction resulting in
6 imprisonment as provided for in Section 154 of this title;

7 3. Execution or enforcement of the lawful orders of any court;

8 4. Adoption or enforcement of or failure to adopt or enforce a
9 law, whether valid or invalid, including, but not limited to, any
10 statute, charter provision, ordinance, resolution, rule, regulation
11 or written policy;

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

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

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

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

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

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

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

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

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

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

18 15. Absence, condition, location or malfunction of any traffic
19 or road sign, signal or warning device unless the absence,
20 condition, location or malfunction is not corrected by the state or
21 political subdivision responsible within a reasonable time after
22 actual or constructive notice or the removal or destruction of such
23 signs, signals or warning devices by third parties, action of
24 weather elements or as a result of traffic collision except on

1 failure of the state or political subdivision to correct the same
2 within a reasonable time after actual or constructive notice.
3 Nothing herein shall give rise to liability arising from the failure
4 of the state or any political subdivision to initially place any of
5 the above signs, signals or warning devices. The signs, signals and
6 warning devices referred to herein are those used in connection with
7 hazards normally connected with the use of roadways or public ways
8 and do not apply to the duty to warn of special defects such as
9 excavations or roadway obstructions;

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

11 17. Misrepresentation, if unintentional;

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

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

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

22 21. Participation in any activity approved by a local board of
23 education and held within a building or on the grounds of the school
24

1 district served by that local board of education before or after
2 normal school hours or on weekends;

3 22. Use of indoor or outdoor school property and facilities
4 made available for public recreation before or after normal school
5 hours or on weekends or school vacations, except those claims
6 resulting from willful and wanton acts of negligence. For purposes
7 of this paragraph:

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

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

16 23. Any court-ordered, Department of Corrections or county
17 approved work release program; provided, however, this provision
18 shall not apply to claims from individuals not in the custody of the
19 Department of Corrections based on accidents involving motor
20 vehicles owned or operated by the Department of Corrections;

21 24. The activities of the state military forces when on state
22 active duty orders or on Title 32 active duty orders;

23 25. Provision, equipping, operation or maintenance of any
24 prison, jail or correctional facility, or injuries resulting from

1 the parole or escape of a prisoner or injuries by a prisoner to any
2 other prisoner; provided, however, this provision shall not apply to
3 claims from individuals not in the custody of the Department of
4 Corrections based on accidents involving motor vehicles owned or
5 operated by the Department of Corrections;

6 26. Provision, equipping, operation or maintenance of any
7 juvenile detention facility, or injuries resulting from the escape
8 of a juvenile detainee, or injuries by a juvenile detainee to any
9 other juvenile detainee;

10 27. Any claim or action based on the theory of a manufacturer's
11 products liability or breach of warranty, either expressed or
12 implied;

13 28. Any claim or action based on the theory of indemnification
14 or subrogation; provided, however, a political subdivision as
15 defined in subparagraph s of paragraph 11 of Section 152 of this
16 title may enter into a contract with a contract operator or any
17 railroad operating in interstate commerce that sells a property
18 interest or provides services to a regional transportation
19 authority, or allows the regional transportation authority to use
20 the railroad's property or tracks for the provision of public
21 passenger rail service, providing for the allocation of financial
22 responsibility, indemnification, or the procurement of insurance for
23 the parties for all types of claims or damages, provided that funds
24 have been appropriated to cover the resulting contractual obligation

1 at the time the contract is executed. The acquisition of commercial
2 liability insurance to cover the activities of the regional
3 transportation authority, contract operator or railroad shall not
4 operate as a waiver of any of the liabilities, immunities or
5 defenses provided for political subdivisions pursuant to the
6 provisions of The Governmental Tort Claims Act. A contract entered
7 into under this paragraph shall not affect rights of employees under
8 the ~~Federal~~ federal Employers Liability Act or the ~~Federal~~ federal
9 Railway Labor Act;

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

12 30. Acts or omissions done in conformance with then current
13 recognized standards;

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

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

24 33. Any court-ordered community sentence;

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

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

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

12 37. Use of a public facility opened to the general public
13 during an emergency; or

14 38. The maintenance and operation of public sanitary sewer
15 systems which is deemed to be in compliance with the requirements of
16 Section 1 of this act for a nuisance claim arising within five (5)
17 years of the effective date of this act.

18 SECTION 3. This act shall become effective November 1, 2024.
19

20 59-2-3646 MSBB 3/13/2024 2:26:10 PM
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