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February 22, 2024

AS AMENDED

SENATE BILL NO. 1650

By: Paxton

[cities and towns - rule promulgation - notice -
conformance standards - right of recovery -
moratorium - exemptions - 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 Oklahoma Water Resources Board shall promulgate rules to require any or all of the following components of public utilities, taking into account available revenue streams to the public utility:

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

2. Regular inspections, cleaning, and root control, including:

a. inspection of twenty percent (20%) of all lines to

determine the clarity of sewage flows,

- b. routine maintenance programs,
- c. cleaning or jetting of twenty percent (20%) of habitually clogged or occluded lines per year, and
- d. treatment of thirty-three percent (33%) of lines per year identified as having habitual blockages due to root infiltration with root control through either mechanical or chemical treatments;

3. Response within a reasonable time frame to calls for sanitary sewer overflows (SSO) to clear sewer mains, disinfect land upon which SSO has occurred, and remove SSO debris from land upon which SSO has occurred;

4. Adoption of a fat oils and grease ordinance (FOG) prohibiting introduction of any fats, oils, or grease from nonresidential entities that are connected to the sanitary sewer system and incorporating pre-treatment regulations for such entities. Public utilities shall periodically notify nonresidential system participants of the restrictions within this paragraph;

5. Adoption of an ordinance requiring new construction or remodels of existing buildings to be connected to the sanitary sewer system, including the installation of a backflow prevention device on the lateral line connecting the structure to the sanitary sewer main line;

6. Adoption of a policy advising private residential property owners who are connected to the sanitary sewer system to install a

1 backflow prevention system on the lateral line connecting the
2 property to the sanitary sewer main line. Public utilities shall
3 periodically notify residential customers of the advisement within
4 this paragraph;

5 7. Adoption of a funding availability model that contains the
6 following:

- 7 a. the total revenue from ratepayers that can reasonably
8 be expected over a fiscal year,
- 9 b. funding sources from city or town revenues that can
10 reasonably be expected to be contributed to the
11 sanitary sewer system operations, maintenance, or
12 capital improvements,
- 13 c. external sources of funding from local, state,
14 federal, or tribal entities that could be available
15 for sanitary sewer system operations, maintenance, or
16 capital improvements, and
- 17 d. bonding capacities, whether revenue bonds or general
18 obligation bonds, that could be available for sanitary
19 sewer system operations, maintenance, or capital
20 improvements.

21 Funding availability models shall be reviewed at least every
22 five (5) years to include a rate study recommending reasonable rates
23 for those connected to the sanitary sewer system; and
24

1 8. Adoption of a five-year capital improvement plan that
2 includes dedication of appropriate funding available to:

3 a. repair or replace sanitary sewer lines and lift
4 stations that have been identified as severely
5 occluded or necessary for operation of the system,
6 respectively, and

7 b. access to or purchase of equipment necessary to
8 reasonably operate the sanitary sewer system serving
9 the citizens of the city or town that are connected to
10 the sanitary sewer system.

11 C. Periodic advisement as described in paragraphs 4 and 6 of
12 subsection B of this section shall be satisfied by annual
13 publication in a newspaper of general circulation within the city or
14 town, publication on the city- or town-sponsored website, or annual
15 inserts in ratepayer monthly utility bills. Nothing in this
16 subsection shall be construed to prohibit a city or town from making
17 notification to ratepayers more often than an annual basis.

18 D. Cities and towns that are in the process of implementing the
19 policies prescribed in paragraphs 1, 2, 7, and 8 of subsection B of
20 this section with a goal of completion and full implementation
21 within five (5) years of the effective date of this act shall be
22 considered in conformance with the prescribed requirements.

23 E. 1. There is hereby recognized that there shall be no right
24 of recovery for personal injury from a sanitary sewer overflow,

provided that the utility charged with operation of the sanitary sewer system is working to maintain its sanitary sewer system in accordance with the guidance and criteria promulgated by the Board pursuant to subsection B of this section and any criteria or guidelines promulgated by a governmental entity under an interlocal cooperative pursuant to Section 1001 et seq. of Title 74 of the Oklahoma Statutes.

2. Beginning on the effective date of this act, a five-year moratorium is hereby established against nuisance-based tort claims relating to the operation of public sanitary sewer systems for cities and towns working toward implementing the policies described in subsection D of this section.

SECTION 2. AMENDATORY 51 O.S. 2021, Section 155, as amended by Section 21, Chapter 228, O.S.L. 2022 (51 O.S. Supp. 2023, 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

1 statute, charter provision, ordinance, resolution, rule, regulation
2 or written policy;

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

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

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

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

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

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

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

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

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

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

9 15. Absence, condition, location or malfunction of any traffic
10 or road sign, signal or warning device unless the absence,
11 condition, location or malfunction is not corrected by the state or
12 political subdivision responsible within a reasonable time after
13 actual or constructive notice or the removal or destruction of such
14 signs, signals or warning devices by third parties, action of
15 weather elements or as a result of traffic collision except on
16 failure of the state or political subdivision to correct the same
17 within a reasonable time after actual or constructive notice.
18 Nothing herein shall give rise to liability arising from the failure
19 of the state or any political subdivision to initially place any of
20 the above signs, signals or warning devices. The signs, signals and
21 warning devices referred to herein are those used in connection with
22 hazards normally connected with the use of roadways or public ways
23 and do not apply to the duty to warn of special defects such as
24 excavations or roadway obstructions;

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

2 17. Misrepresentation, if unintentional;

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

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

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

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

17 22. Use of indoor or outdoor school property and facilities
18 made available for public recreation before or after normal school
19 hours or on weekends or school vacations, except those claims
20 resulting from willful and wanton acts of negligence. For purposes
21 of this paragraph:

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

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

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

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

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

20 26. Provision, equipping, operation or maintenance of any
21 juvenile detention facility, or injuries resulting from the escape
22 of a juvenile detainee, or injuries by a juvenile detainee to any
23 other juvenile detainee;

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

4 28. Any claim or action based on the theory of indemnification
5 or subrogation; provided, however, a political subdivision as
6 defined in subparagraph s of paragraph 11 of Section 152 of this
7 title may enter into a contract with a contract operator or any
8 railroad operating in interstate commerce that sells a property
9 interest or provides services to a regional transportation
10 authority, or allows the regional transportation authority to use
11 the railroad's property or tracks for the provision of public
12 passenger rail service, providing for the allocation of financial
13 responsibility, indemnification, or the procurement of insurance for
14 the parties for all types of claims or damages, provided that funds
15 have been appropriated to cover the resulting contractual obligation
16 at the time the contract is executed. The acquisition of commercial
17 liability insurance to cover the activities of the regional
18 transportation authority, contract operator or railroad shall not
19 operate as a waiver of any of the liabilities, immunities or
20 defenses provided for political subdivisions pursuant to the
21 provisions of The Governmental Tort Claims Act. A contract entered
22 into under this paragraph shall not affect rights of employees under
23 the Federal Employers Liability Act or the ~~Federal~~ federal Railway
24 Labor Act;

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

3 30. Acts or omissions done in conformance with then current
4 recognized standards;

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

10 32. Any confirmation of the existence or nonexistence of any
11 effective financing statement on file in the office of the Secretary
12 of State made in good faith by an employee of the office of the
13 Secretary of State as required by the provisions of Section 1-9-
14 320.6 of Title 12A of the Oklahoma Statutes;

15 33. Any court-ordered community sentence;

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

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

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

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

6 38. Any claim occurring within five years of November 1, 2024,
7 arising out of the maintenance and operation of public sanitary
8 sewer systems which are deemed in conformance with the requirements
9 of Section 1 of this act as prescribed by the Oklahoma Water
10 Resources Board.

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

12 COMMITTEE REPORT BY: COMMITTEE ON GENERAL GOVERNMENT
13 February 22, 2024 - DO PASS AS AMENDED
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