

1 STATE OF OKLAHOMA

2 2nd Session of the 59th Legislature (2024)

3 SENATE BILL 1650

By: Paxton

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5  
6 AS INTRODUCED

7 An Act relating to cities and towns; defining term;  
8 directing rule promulgation regarding certain public  
9 utilities; specifying content of rules; providing for  
10 certain notice; establishing conformance standards;  
11 disallowing right of recovery for personal injury  
12 under certain circumstances; establishing moratorium  
13 for certain utilities under certain circumstances for  
14 certain time period; amending 51 O.S. 2021, Section  
15 155, as amended by Section 21, Chapter 228, O.S.L.  
16 2022 (51 O.S. Supp. 2023, Section 155), which relates  
17 to exemptions from liability; conforming language;  
18 providing for codification; and providing an  
19 effective date.

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

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

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

1 B. The Oklahoma Water Resources Board shall promulgate rules to  
2 require any or all of the following components of public utilities,  
3 taking into account available revenue streams to the public utility:

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

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

7 a. inspection of twenty percent (20%) of all lines to  
8 determine the clarity of sewage flows,

9 b. routine maintenance programs,

10 c. cleaning or jetting of twenty percent (20%) of  
11 habitually clogged or occluded lines per year, and

12 d. treatment of thirty-three percent (33%) of lines per  
13 year identified as having habitual blockages due to  
14 root infiltration with root control through either  
15 mechanical or chemical treatments;

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

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

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

8 6. Adoption of a policy advising private residential property  
9 owners who are connected to the sanitary sewer system to install a  
10 backflow prevention system on the lateral line connecting the  
11 property to the sanitary sewer main line. Public utilities shall  
12 periodically notify residential customers of the advisement within  
13 this paragraph;

14 7. Adoption of a funding availability model that contains the  
15 following:

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

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

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

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

- 12 a. repair or replace sanitary sewer lines and lift  
13 stations that have been identified as severely  
14 occluded or necessary for operation of the system,  
15 respectively, and  
16 b. access to or purchase of equipment necessary to  
17 reasonably operate the sanitary sewer system serving  
18 the citizens of the city or town that are connected to  
19 the sanitary sewer system.

20 C. Periodic advisement as described in paragraphs 4 and 6 of  
21 subsection B of this section shall be satisfied by annual  
22 publication in a newspaper of general circulation within the city or  
23 town, publication on the city- or town-sponsored website, or annual  
24 inserts in ratepayer monthly utility bills. Nothing in this

1 subsection shall be construed to prohibit a city or town from making  
2 notification to ratepayers more often than an annual basis.

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

8 E. 1. There is hereby recognized that there shall be no right  
9 of recovery for personal injury from a sanitary sewer overflow,  
10 provided that the utility charged with operation of the sanitary  
11 sewer system is working to maintain its sanitary sewer system in  
12 accordance with the guidance and criteria promulgated by the Board  
13 pursuant to subsection B of this section and any criteria or  
14 guidelines promulgated by a governmental entity under an interlocal  
15 cooperative pursuant to Section 1001 et seq. of Title 74 of the  
16 Oklahoma Statutes.

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

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

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 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  
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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  
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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  
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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 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 Employers Liability Act or the ~~Federal~~ federal Railway  
9 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 of the Secretary  
21 of State made in good faith by an employee of the office of the  
22 Secretary of State as required by the provisions of Section 1-9-  
23 320.6 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. Any claim occurring within five years of November 1, 2024,  
15 arising out of the maintenance and operation of public sanitary  
16 sewer systems which are deemed in conformance with the requirements  
17 of Section 1 of this act as prescribed by the Oklahoma Water  
18 Resources Board.

19 SECTION 3. This act shall become effective November 1, 2024.  
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21 59-2-2643 RD 1/16/2024 11:30:51 AM  
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