

STATE OF OKLAHOMA

2nd Session of the 59th Legislature (2024)

SENATE BILL 1650

By: Paxton

AS INTRODUCED

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

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

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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