

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL 1307

By: Easley of the Senate

and

Leist of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to environment and natural resources; amending 27A O.S. 2001, Sections 2-4-101, 2-4-201, 2-4-301, 2-4-302, 2-4-303, 2-4-304 and 2-4-305, which relate to laboratory services and certification; modifying and adding definitions; clarifying and updating statutory references; changing term for certain samples; providing for accreditation of laboratories and accreditation programs; requiring compliance with certain rules and standards; removing requirement for Board to promulgate rules certifying laboratory operators for municipal wastewater and municipal waterworks; requiring Department to issue certain letter of accreditation to certain laboratories; requiring Department to accept certain laboratory analyses from accredited laboratories; authorizing Department to reject analyses from nonaccredited laboratories; stating process for reports and analyses for operational testing of municipal wastewater treatment systems and water supply systems; prohibiting interference with certain waste receptacles; creating misdemeanor offense; stating penalties; prohibiting certain use of recyclable materials; creating misdemeanor offense; stating penalties; amending 63 O.S. 2001, Section 1061, which relates to housing authorities; prohibiting authorities from conducting certain lead-based paint inspections or services; stating exception; providing for codification; and declaring an emergency.

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

SECTION 1. AMENDATORY 27A O.S. 2001, Section 2-4-101, is amended to read as follows:

Section 2-4-101. As used in this article:

1. "Acceptable results" means a result within limits determined on the basis of statistical procedures as prescribed by the Department of Environmental Quality;

2. ~~"Certificate" means that document issued by the Department showing those parameters for which a laboratory has received certification;~~

3. ~~"Certification" means the same as laboratory accreditation~~
"Accreditation" means the act of certifying that a laboratory maintains suitable standards and includes primary accreditation and reciprocity accreditation;

3. "Analyte" means the characteristics of a laboratory sample determined by an analytic laboratory testing procedure;

4. "Department" means the Department of Environmental Quality;

5. "Evaluation" means a review of the quality control and quality assurance procedures, recordkeeping, reporting procedures, methodology, personal qualifications, equipment, facilities and analytical technique of a laboratory for measuring or establishing specific ~~parameters~~ analytes;

6. "Laboratory" means a facility that performs analyses to determine the chemical, physical, or biological properties of air, water, solid waste, hazardous waste, wastewater, or soil or subsoil materials or performs any other analyses related to environmental quality evaluations; and

7. ~~"Parameter" means the characteristics of a laboratory sample determined by an analytic laboratory testing procedure~~ "Letters of Accreditation" means a document issued by the Department showing those analytes for which a laboratory is accredited.

SECTION 2. AMENDATORY 27A O.S. 2001, Section 2-4-201, is amended to read as follows:

Section 2-4-201. A. The Department of Environmental Quality is authorized to acquire, operate and maintain laboratories to analyze samples:

1. From pollution studies;
2. To obtain factual data to support any order, permit, function or program of the Department;
3. To provide accurate information on wastewater flows and discharges or the chemical, physical or biological characteristics of wastewater;
4. To check the operations of treatment or disposal systems or works to determine whether they meet plans and specifications approved by the Department;
5. To provide laboratory service for individuals, cities, towns, counties, state institutions and other state and federal agencies;
6. From studies and investigations of any waste or pollutant entering treatment systems or waters of the state or any media in which the presence of a contaminant or pollutant is suspected; and
7. To provide such services and perform such other analyses as is necessary to implement and enforce the programs and functions under the jurisdiction of the Department pursuant to ~~this~~ the Oklahoma Environmental Quality Code.

B. The Environmental Quality Board shall promulgate rules for laboratory services under this Code. The Board shall follow the procedures required by the Administrative Procedures Act for promulgation of such rules.

C. 1. The Board, pursuant to ~~Section 24 of this act~~ and the Administrative Procedures Act, shall promulgate as a rule a fee schedule based on actual cost of analyses and the costs of the provision of laboratory services. The schedule shall include fees for specific ~~parameters~~ analytes and procedures.

2. Fees charged pursuant to this section shall be paid into the Department of Environmental Quality Revolving Fund and shall only be used by the Department in administering the Department's environmental laboratory ~~pursuant to Section 24 of this act~~.

D. The Department may, if necessary to meet the demand for laboratory services, contract, pursuant to the provisions of the Central Purchasing Act, for the performance of analyses with laboratories ~~certified~~ accredited by the Department.

SECTION 3. AMENDATORY 27A O.S. 2001, Section 2-4-301, is amended to read as follows:

Section 2-4-301. The Department of Environmental Quality is hereby designated as the administrative agency for national environmental laboratory accreditation programs and shall:

1. Establish and administer the state water quality and environmental laboratory ~~certification~~ accreditation programs for laboratories which apply; and

2. Issue, modify, renew, reinstate, revoke, or suspend the ~~certification~~ accreditation of a laboratory or deny a new or renewal ~~certification~~ accreditation application.

SECTION 4. AMENDATORY 27A O.S. 2001, Section 2-4-302, is amended to read as follows:

Section 2-4-302. A. The Board of Environmental Quality shall promulgate rules for ~~certification~~ accreditation of privately and publicly owned laboratories for performance of environmental analyses ~~and for certification of laboratory operators for municipal wastewater works and municipal waterworks.~~ The Board may also promulgate rules which adopt standards of a national environmental laboratory accreditation program and the United States Environmental Protection Agency by reference.

B. The Board, pursuant to Section 2-2-101 of this title and the Administrative Procedures Act, shall promulgate rules for the assessment of reasonable fees to participating laboratories for the administrative costs of the ~~certification~~ accreditation program.

C. Fees charged pursuant to this section shall be paid into the Department of Environmental Quality Revolving Fund and shall only be

used by the Department in administering the Department's laboratory ~~certification~~ accreditation program.

SECTION 5. AMENDATORY 27A O.S. 2001, Section 2-4-303, is amended to read as follows:

Section 2-4-303. A. Applications for ~~certification~~ accreditation shall be made in the form and manner established by the ~~Board~~ Department of Environmental Quality.

B. The Department may make on-site evaluations of applicant laboratories.

C. 1. Based upon completion of the criteria evaluation by the Department or other evaluations, the Department shall either issue or deny ~~certification~~ accreditation to an applicant laboratory.

2. Only those laboratories that meet ~~Department~~ rules promulgated by the Environmental Quality Board shall be ~~certified~~. ~~A certificate~~ accredited. Letters of Accreditation shall be issued only for the categories or ~~parameters~~ analytes for which the capabilities and adequacy of the laboratory ~~has~~ have been demonstrated.

3. Causes for denial of an application shall include, but not be limited to, the misrepresentation of or the omission of fact or facts from any ~~certification~~ accreditation application or the failure to demonstrate compliance with ~~Board~~ rules promulgated by the Board. If ~~certification~~ accreditation is denied, the Department shall give written notice to the applicant of such denial and the reasons therefor.

SECTION 6. AMENDATORY 27A O.S. 2001, Section 2-4-304, is amended to read as follows:

Section 2-4-304. A. The Department of Environmental Quality shall accept reports or laboratory analyses performed by ~~certified~~ accredited laboratories ~~unless the~~ but may reject analyses that were not performed in compliance with the ~~Department's~~ rules promulgated by the Environmental Quality Board or the laboratory's

~~certification. The Department may reject reports or analyses from any certified laboratory not in compliance with terms of its certification or the Board's rules accreditation.~~ The Department shall ~~not~~ may require, ~~pursuant to rules promulgated by the Board,~~ that reports or laboratory analyses which are submitted to the Department pursuant to this the Oklahoma Environmental Code, rules promulgated thereunder, and permits and orders issued pursuant thereto or rules promulgated by the Board, permits or orders issued by the Department shall be performed by laboratories ~~certified accredited~~ by the Department unless if the submission of reports or laboratory analyses performed by a ~~certified~~ an accredited laboratory is specifically required or authorized by ~~this the Oklahoma Environmental Quality Code, rules adopted thereunder, or federal law or federal regulations.~~

B. ~~For purposes of operational testing of municipal wastewater treatment systems and water supply systems, the~~ The Department shall accept laboratory reports and analyses prepared and performed by ~~such system's laboratories operated by Department-certified~~ laboratory operators certified by the Department unless for operational testing of municipal wastewater treatment systems and water supply systems provided that the analyses were ~~not~~ performed in compliance with the Department's rules or the terms of the laboratory operator's certification.

C. Acceptance of such reports or analyses shall not preclude the Department from declining for cause to rely on such results or from requiring additional laboratory analyses or reports from the person submitting such analyses or reports.

SECTION 7. AMENDATORY 27A O.S. 2001, Section 2-4-305, is amended to read as follows:

Section 2-4-305. A. The Department of Environmental Quality may suspend, revoke, or refuse to renew in part or in whole the ~~certification~~ accreditation of any laboratory which does not

continue to comply with rules promulgated by the Board of Environmental Quality ~~rules~~ or conditions of ~~certification accreditation~~, or for cause, including but not limited to:

1. The knowing and willful falsification of data submitted to the Department;

2. The misrepresentation or omission of material data in any report submitted to any person relying on such report because of the laboratory's ~~certification~~ accreditation;

3. Failure to maintain or utilize approved quality control procedures, recordkeeping, reporting procedures, methodology, personnel requirements, equipment, facilities or analytical techniques on which the ~~certification~~ accreditation was issued;

4. Failure to achieve acceptable results on ~~performance evaluation~~ proficiency testing samples; or

5. For laboratories holding Department-issued ~~certification accreditation~~, the expiration, suspension or revocation of the laboratory's reciprocal out-of-state certification or accreditation.

B. The Department may conduct on-site evaluations of ~~certified accredited~~ laboratories.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1230.11 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. It is unlawful for any person, firm or corporation, other than a municipality or a county, the person owning or operating the receptacle, the Department of Environmental Quality, their authorized contractors, or their duly appointed agents, to interfere in any manner with any receptacles containing garbage, rubbish, dirt or dead animals or to remove any such receptacle from the location where placed by the owner thereof, or to remove any of the contents of such receptacles.

B. Any person violating any of the provisions of this section upon conviction thereof shall be guilty of a misdemeanor and shall be punished as follows:

1. For a first offense, a fine of not more than One Hundred Dollars (\$100.00);

2. For a second offense, a fine of not less than One Hundred Dollars (\$100.00) but not more than Five Hundred Dollars (\$500.00); and

3. For a third or subsequent offense, a fine of not more than One Thousand Dollars (\$1,000.00) or by imprisonment in the county jail for a period not to exceed six (6) months or by both such fine and imprisonment.

C. Each day that any violation of this section occurs or continues shall constitute a separate offense and shall be punishable as a separate violation. Every act or transaction prohibited by this section shall constitute a separate offense as to each item, issue or title involved and shall be punishable as such.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1230.12 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. No person shall divert to personal or commercial use any recyclable material placed in a container as a part of a recycling program, without the consent of the generator or the collector of the recyclable material or the person owning or operating the container as a part of the recycling program.

B. Any person violating any of the provisions of this section upon conviction thereof shall be guilty of a misdemeanor and shall be punished as follows:

1. For a first offense, a fine of not more than One Hundred Dollars (\$100.00);

2. For a second offense, a fine of not less than One Hundred Dollars (\$100.00) but not more than Five Hundred Dollars (\$500.00); and

3. For a third or subsequent offense, a fine of not more than One Thousand Dollars (\$1,000.00) or by imprisonment in the county jail for a period not to exceed six (6) months or by both such fine and imprisonment.

C. Each day that any violation of this section occurs or continues shall constitute a separate offense and shall be punishable as a separate violation. Every act or transaction prohibited by this section shall constitute a separate offense as to each item, issue or title involved and shall be punishable as such.

SECTION 10. AMENDATORY 63 O.S. 2001, Section 1061, is amended to read as follows:

Section 1061. Every authority shall have all powers necessary or convenient to carry out and effectuate the purposes and provisions of this act, including the following powers in addition to others herein specifically granted:

(a) To sue and to be sued; to have a seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority; and to make and from time to time amend and repeal bylaws, rules and regulations.

(b) Within its area of operation: to prepare, carry out and operate projects and to provide for the acquisition, construction, reconstruction, improvement, extension, alteration or repair of any project or any part thereof. Provided, however, that a public hearing to consider a proposed project requiring construction, purchasing, leasing or renting of more than twenty new housing units shall be held together by the authority and governing body, and any such project must be found to be in the public interest by a majority of the members constituting said authority and a majority

of the members constituting said governing body as a condition precedent to the implementation of any such project. Notice of the public hearing required by this provision shall be given by publication in a newspaper of general circulation within the jurisdiction of the authority at least ten (10) days and not more than thirty (30) days prior to said hearing; provided that an additional public hearing shall be held by the authority before the same shall select any location for any contiguous or noncontiguous area of land on which the authority proposes to construct more than twenty additional new housing units, and such hearing shall have as its subject the location of the proposed additional units. Notice of the public hearing required by this provision shall be given in a newspaper of general circulation within the jurisdiction of the authority at least ten (10) days and not more than thirty (30) days prior to said hearing and three members of the Commission must concur in the selection of any such location, except that the aforesaid proviso concerning an additional public hearing shall not apply to a location in an approved urban renewal project area.

(c) To undertake and carry out studies and analyses of housing needs within its area of operation and ways of meeting such needs, including data with respect to population and family groups and the distribution thereof according to income groups, the amount and quality of available housing and its distribution according to rental and sale prices, employment, wages and other factors affecting the local housing needs and the meeting thereof, and to make the results of such studies and analyses available to the public and the building, housing and supply industries; and to engage in research and disseminate information on housing and slum clearance.

(d) To utilize, contract with, act through, assist and cooperate or deal with any person, agency, institution or organization, public or private, for the provision of services, privileges, works or

facilities for or in connection with its projects; and, notwithstanding anything to the contrary contained in this act or in any other provision of law, to agree to any conditions attached to federal financial assistance relating to the determination of prevailing salaries or wages or payment of not less than prevailing salaries or wages or compliance with labor standards, in the development or administration of projects, and to include in any contract awarded or entered into in connection with a project stipulations requiring that the contractor and all subcontractors comply with requirements as to minimum salaries or wages and maximum hours of labor, and comply with any conditions attached to the financial aid of the project. Construction, restitution, improvement, extension, alteration or major repair of any project or any part thereof shall be open to competitive bidding: provided, however, nothing in this section shall prevent a local housing authority from requesting proposals from property owners and/or developers to provide certain kinds of housing to the housing authority either presently existing or to be developed; provided, that the local authority establish safeguards relating to laws and regulations of the United States wherein the same has entered into contracts with the authority to provide financial assistance in acquiring the same; provided, further, that no authority shall discriminate in its seeking, or in the award, of any contract for services, acquisition of real or personal property, construction of buildings, dwelling units, streets, utilities, site grading, landscaping and repairs to any of its holdings or upon property that the authority plans to acquire, to include renovations, solely based on the race, sex, color, religious beliefs or national origin of a person or firm; except an Indian authority may give preference in its awarding of a contract in all forms so long as the services to be performed, or the construction of buildings, dwellings, site improvements, repairs or renovation is to be performed or carried

out on a federally recognized tribal reservation or former reservations and only then upon land held in trust by, or owned by, the respective Indian tribe; and provided, further, that all previously listed restrictions and regulations concerning public hearings and locations of said projects are complied with in their entirety.

(e) To lease, rent, sell or lease with option to purchase any dwelling, accommodations, lands, buildings, structures or facilities embraced in any project and, subject to the limitations contained in this act with respect to the rental of or charges for dwellings in housing projects, to establish and revise the rents or charges therefor; to own, hold and improve real or personal property; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise or otherwise any real or personal property or any interest therein; to acquire by the exercise of the power of eminent domain any real property or interest therein; to sell, lease, exchange, transfer, assign, pledge or dispose of any real or personal property or any interest therein, provided, however, that before any such personal property shall be sold it shall be advertised for sale in a newspaper of general circulation within the jurisdiction of the authority, and such advertisement shall state the time and place where written bids shall be received, or public auction shall be held, that such property shall be sold to the highest bidder, and that the authority may, within its discretion, reject all bids and readvertise such property for sale in the event any property, real or personal, acquired by the authority, by eminent domain or otherwise, is later found to be in excess of its needs, or unsuitable or unuseable for any reason, such property shall, before being sold, leased, exchanged, transferred, assigned, pledged or disposed of in any other manner, be first offered to those persons, individuals, groups, organizations, corporations, municipalities or their successors from whom it was first procured

by the authority, at the same price as paid by the authority at the time of acquiring same, and except that lands acquired by the authority may be sold to other governmental agencies for public purposes, as long as such parcel of land does not exceed one percent (1%) of the total land held by the authority and the sale is made within ninety (90) days of the effective date of this act; to make loans for the provisions of housing for occupancy by persons of low income; to insure or provide for the insurance of any real or personal property or operations of the authority against any risks or hazards; to procure or agree to the procurement of government insurance or guarantees of the payment of any bonds or parts thereof issued by the authority, including the power to pay premiums on any such insurance; provided, however, that notwithstanding any provisions in this law, the authority may develop programs for the sale of individual homes and/or two-family units to low income families or to families who have at one time qualified as low income families under this act, under terms which the housing authority may establish under conditions acceptable to bondholders, other lenders and the federal government.

(f) To invest any funds held in reserves or sinking funds or any funds not required for immediate disbursement in property or securities in which public funds in the custody of a county treasurer or the Treasurer of the State of Oklahoma may be legally invested; to redeem its bonds at the redemption price established therein or to purchase its bonds at less than such redemption price, all bonds so redeemed or purchased to be cancelled.

(g) Within its area of operation: to determine where slum areas exist or where there is unsafe, unsanitary or overcrowded housing; to make studies and recommendations relating to the problem of clearing, replanning and reconstruction of slum areas and the problem of eliminating unsafe, unsanitary or overcrowded housing and providing dwelling accommodations for persons of low income; and to

cooperate with the state or any state public body in action taken in connection with such problems. Provided, however, the authority shall not have the power to relocate any persons to other areas until housing has been provided for such persons under this act.

(h) Acting through one or more commissioners or other persons designated by the authority: to conduct examinations and investigations and to hear testimony and take proof under oath at public hearings on any matter material for its information; to administer oaths, issue subpoenas requiring the attendance of witnesses or the production of books and papers and to issue commissions for the examination of witnesses who are outside of the state or unable to attend before the authority, or excused from attendance; to make available to appropriate agencies, including those charged with the duty of abating or requiring the correction of nuisances or like conditions or of demolishing unsafe or unsanitary structures within its area of operation, its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety or welfare.

(i) To exercise all or any part or combination of powers herein granted.

The powers of an authority shall not include: (1) the power to appropriate funds of a city or county; (2) the power to levy taxes and assessments; (3) the power to zone or rezone; ~~or~~ (4) the power to make exceptions to zoning ordinances or building regulations of a city or county; or (5) the power to conduct lead-based paint inspections or other lead-based paint services in competition with private enterprise except on properties associated with housing projects owned or operated by the Authority.

No provision by law with respect to the acquisition, operation or disposition of property by other public bodies shall be

applicable to an authority unless the Legislature shall specifically so state.

SECTION 11. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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