

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

2ND CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL 440

By: Easley of the Senate

and

Glover of the House

2ND CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to electricity, the Grand River Dam Authority and public safety; amending Section 2, Chapter 391, O.S.L. 1998 (11 O.S. Supp. 2000, Section 21-222), which relates to moratorium on municipal condemnation; modifying certain date; providing for termination of moratorium; amending Section 7, Chapter 162, O.S.L. 1997, as amended by Section 7, Chapter 391, O.S.L. 1998 (17 O.S. Supp. 2000, Section 190.7), which relates to prohibitions on switching electric distribution providers; removing certain date; prohibiting switching of certain electric providers until enactment of certain implementing legislation; stating exemption for sales of assets; creating the Electric Restructuring Advisory Committee; stating purpose; stating membership; requiring public meetings; requiring mutual agreement by certain members on meeting agendas, dates and locations; providing for public notice; requiring certain reports to be made publicly available; providing for travel reimbursement; stating duties; requiring final report by certain date; prohibiting consumer choice of retail electric energy providers until receipt of final report and enactment of certain enabling legislation; providing for staffing; authorizing Committee to employ certain staff; providing for termination; providing certain tax credit for the production of electricity from certain zero-emission facilities; defining terms; stating amount of tax credit; providing certain time period for use of credits; providing for transfer of credits; requiring certain written agreement; authorizing the Oklahoma Tax Commission to promulgate rules; stating when tax credit may be claimed; authorizing the Department of Public Safety to distribute certain federal funds using certain formula; exempting the Grand River Dam Authority from the Oklahoma Open Records Act and Oklahoma Open Meeting Act for certain purposes; providing for codification; providing for noncodification; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 2, Chapter 391, O.S.L. 1998 (11 O.S. Supp. 2000, Section 21-222), is amended to read as follows:

Section 21-222. There is hereby declared a moratorium on all municipal condemnation proceedings instituted pursuant to Section 437.2 of Title 18 of the Oklahoma Statutes, initiated prior to ~~July 1, 2002~~ the enactment of electric restructuring enabling legislation and the implementation of consumer choice of retail electric energy suppliers. The moratorium shall also apply to all municipalities or public trusts thereof which attempt to condemn the facilities of electric public utilities or rural electric cooperatives for the purpose of utilizing such facilities for the delivery of electric power and energy. ~~If~~ The moratorium shall remain in effect until the enactment of electric restructuring enabling legislation and implementation of ~~full~~ consumer choice of retail electric energy suppliers in the supply of electric power and energy is implemented in this state on or before July 1, 2002, Upon such enactment of electric restructuring enabling legislation and implementation of consumer choice of retail electric energy suppliers, the municipal condemnation provisions authorizing municipalities with electric utilities to condemn the facilities of rural electric cooperatives contained in Section 437.2 of Title 18 of the Oklahoma Statutes is hereby repealed. ~~If retail consumer choice is not implemented in this state on or before July 1, 2002, this moratorium shall become null and void.~~ The moratorium provided for herein shall have prospective and retroactive application.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24-105.1 of Title 11, unless there is created a duplication in numbering, reads as follows:

Notwithstanding the provisions of subsection (f) of Section 24-105 of Title 11 of the Oklahoma Statutes that prohibits joint ownership in any plant for the generation of electric energy with

any investor-owned utility that did not exist on May 10, 1981, the Oklahoma Municipal Power Authority is hereby authorized to own a joint interest in any electric generation project, except any nuclear generating plant.

SECTION 3. AMENDATORY Section 7, Chapter 162, O.S.L. 1997, as amended by Section 7, Chapter 391, O.S.L. 1998 (17 O.S. Supp. 2000, Section 190.7), is amended to read as follows:

Section 190.7 A. Electric distribution providers governed by the Retail Electric Supplier Certified Territory Act, Section 158.21 et seq. of this title or municipal corporations or beneficial trusts thereof owning or operating a retail electric distribution system or the Grand River Dam Authority shall not furnish retail electric service to an electric consuming facility which is currently being served, or which was being served and the permanent electric facilities are in place to render such service, by a municipal corporation or beneficial trust thereof, a rural electric cooperative or an investor-owned electric utility or the Grand River Dam Authority until ~~full implementation of retail~~ enactment of electric restructuring enabling legislation and the implementation of consumer choice, July 1, 2002, of retail electric energy suppliers unless the entities involved have agreed by mutual consent, in writing, to such transaction. For the purpose of this section, "electric distribution providers" shall mean the same as "retail electric service distributors" as defined by Section 190.3 of this title.

B. Any municipal corporation or beneficial trust thereof offering retail electric distribution service from a municipally or trust-owned electric distribution system that decides not to participate in the provisions of this act as outlined in Section 190.3 of this title shall be prohibited from extending a retail electric distribution primary feeder system beyond its corporate limits with the exception that it may continue to offer retail

electric distribution service through the addition of secondary service drops from the primary feeder system it owned outside the corporate limits of such municipality on April 25, 1997. Provided, however, nothing contained in this section shall be construed to prohibit system maintenance, repairs or upgrades to such primary distribution feeder system outside the corporate limits except that secondary service drops shall not be upgraded to primary distribution lines.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 190.20 of Title 17, unless there is created a duplication in numbering, reads as follows:

A. There is hereby established the Electric Restructuring Advisory Committee to the Governor and the Legislature to continue the examination of electric industry restructuring issues. The Advisory Committee shall be composed of nine (9) members as follows:

1. The Chair of the Senate Energy, Environmental Resources and Regulatory Affairs Committee;

2. The Chair of the House Energy and Utility Regulation Committee;

3. A member of the minority party of the Oklahoma State Senate, appointed by the Senate Minority Floor Leader;

4. A member of the minority party of the Oklahoma House of Representatives, appointed by the House Minority Floor Leader;

5. The Governor, or a designee;

6. The Attorney General of Oklahoma;

7. A Corporation Commissioner, selected by majority vote of the Corporation Commissioners;

8. The Superintendent of Public Instruction; and

9. The Vice-Chair of the Oklahoma Tax Commission.

B. All meetings of the Electric Restructuring Advisory Committee shall be open to the public. Meeting agendas, dates and locations shall be determined by mutual agreement of the Governor,

or his designee and the Chair of the Senate Energy, Environmental Resources and Regulatory Affairs Committee and the Chair of the House Energy and Utility Regulation Committee. Public notice of such meetings shall be issued by the Senate and House of Representatives staff providing support to the Advisory Committee. Any reports or other relevant materials issued by the Advisory Committee shall be made available to the public.

C. Members of the Advisory Committee shall be reimbursed by their respective agencies for necessary travel expenses incurred in the performance of their duties in accordance with Section 456 of Title 74 of the Oklahoma Statutes, the State Travel Reimbursement Act, or in accordance with the policies of the members' respective agencies.

D. The Advisory Committee shall:

1. Study the current status of Oklahoma's electrical transmission system and the study performed by the Southwest Power Pool to identify potential points of congestion and suggested future transmission expansion including the financial impact of potential upgrades and improvements;

2. Examine and review the report on electric issues submitted to the Legislature on October 1, 1999;

3. Analyze the current operational characteristics and control of electrical facilities provided by the electric industry in this state;

4. Solicit public opinions from Oklahoma consumers;

5. Review any proposed federal legislation relating to electric restructuring which may affect the electric industry in this state;

6. Examine opportunities to encourage development of zero-emission electric generation facilities;

7. Identify management and control practices adopted by other states relating to the implementation of electric restructuring and

recommend those practices that may benefit consumers, business entities and political subdivisions of this state; and

8. Identify any other issues which are deemed to be relevant and necessary for the Advisory Committee to carry out its duties as specified herein.

E. The Advisory Committee shall prepare an interim report relating to transmission issues no later than December 31, 2001.

F. The Advisory Committee shall, by majority vote, adopt a final report to be delivered to the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives no later than December 31, 2002.

G. Notwithstanding the provisions of Sections 190.2, 190.4 and 190.5 of Title 17 of the Oklahoma Statutes, that created an implementation date for consumer choice of retail electric energy suppliers, such consumer choice of retail electric energy suppliers shall not be implemented in this state until:

1. The final report of the Advisory Committee has been received by the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives; and

2. Electric restructuring enabling legislation is adopted by the Legislature and signed by the Governor.

H. The Senate and House of Representatives shall provide staff support as required by the Advisory Committee and the Advisory Committee shall be authorized to employ any legal counsel, independent consultants or other persons as necessary to assist the Advisory Committee in the performance of its duties. The Advisory Committee may also utilize the expertise of the Corporation Commission, the Tax Commission or any state agency in the performance of its duties.

I. The Advisory Committee shall remain in effect and operate as herein directed until its termination, which shall be no later than

January 1, 2005. The Advisory Committee may elect, by majority vote, to terminate its operations at an earlier date.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2357.32A of Title 68, unless there is created a duplication in numbering, reads as follows:

A. For tax years beginning on or after January 1, 2002, there shall be allowed a credit against the tax imposed by Section 2355 of Title 68 of the Oklahoma Statutes to a taxpayer for the taxpayer's production and sale to an unrelated person of electricity generated by zero-emission facilities located in this state. As used in this act:

1. "Electricity generated by zero-emission facilities" means electricity that is exclusively produced by any facility located in this state with a rated production capacity of fifty megawatts (50 mw) or greater, constructed for the generation of electricity and placed in operation after the effective date of this act, which utilizes eligible renewable resources as its fuel source. The construction and operation of such facilities shall result in no pollution or emissions that are or may be harmful to the environment, pursuant to a determination by the Department of Environmental Quality; and

2. "Eligible renewable resources" means resources derived from:
- a. wind,
 - b. moving water,
 - c. sun, or
 - d. geothermal energy.

B. For electricity generated prior to January 1, 2004, the amount of the credit shall be seventy-five one hundredths of one cent (\$0.0075) for each kilowatt-hour of electricity generated by zero-emission facilities. For electricity generated after January 1, 2004, but prior to January 1, 2007, the amount of the credit shall be fifty one hundredths of one cent (\$0.0050) per kilowatt-hour for electricity generated by zero-emission facilities. For electricity generated

after January 1, 2007, but prior to January 1, 2012, the amount of the credit shall be twenty-five one hundredths of one cent (\$0.0025) per kilowatt-hour of electricity generated by zero-emission facilities.

C. Credits may be claimed for a period of ten (10) years following the date that the facility is placed in operation on and after the effective date of this act.

D. If the credit allowed pursuant to this section exceeds the amount of income taxes due or if there are no state income taxes due on the income of the taxpayer, the amount of the credit allowed but not used in any tax year may be carried forward as a credit against subsequent income tax liability for a period not exceeding ten (10) years.

E. Any nontaxable entities, including agencies of the State of Oklahoma or political subdivisions thereof, shall be eligible to establish a transferable tax credit in the amount provided in subsection B of this section. Such tax credit shall be a property right available to said state agency or political subdivision of this state to transfer or sell to a taxable entity, whether individual or corporate, who shall have an actual or anticipated income tax liability under Section 2355 of Title 68 of the Oklahoma Statutes. These tax credit provisions are authorized as an incentive to the State of Oklahoma, its agencies and political subdivisions to encourage the expenditure of funds in the development, construction and utilization of electricity from zero-emission facilities as defined in subsection A of this section.

F. The amount of the credit allowed, but not used, shall be freely transferable at any time during the ten (10) years following the year of qualification. Any person to whom or to which a tax credit is transferred shall have only such rights to claim and use the credit under the terms that would have applied to the entity by whom or by which the tax credit was transferred. The provisions of this subsection shall not limit the ability of a tax credit transferee to

reduce the tax liability of the transferee, regardless of the actual tax liability of the tax credit transferor, for the relevant taxable period. The transferor initially allowed the credit and any subsequent transferees shall jointly file a copy of any written transfer agreement with the Oklahoma Tax Commission within thirty (30) days of the transfer. The written agreement shall contain the name, address and taxpayer identification number or social security number of the parties to the transfer, the amount of the credit being transferred, the year the credit was originally allowed to the transferor, and the tax year or years for which the credit may be claimed. The Tax Commission may promulgate rules to permit verification of the validity and timeliness of the tax credit claimed upon a tax return pursuant to this subsection but shall not promulgate any rules that unduly restrict or hinder the transfers of such tax credit. The tax credit allowed by this section, upon the election of the taxpayer, may be claimed as a payment of tax, a prepayment of tax or a payment of estimated tax for purposes of Section 1803 or Section 2355 of Title 68 of the Oklahoma Statutes.

G. For electricity generation produced and sold in a calendar year, the tax credit allowed by the provisions of this section, upon election of the taxpayer, shall be treated and may be claimed as a payment of tax, a prepayment of tax or a payment of estimated tax for purposes of Section 2355 of Title 68 of the Oklahoma Statutes on or after July 1 of the following calendar year.

SECTION 6. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

The Secretary of State is authorized to expend an amount not to exceed Seventy-five Thousand Dollars (\$75,000.00) or so much thereof as may be necessary from the Secretary of State Revolving Fund ("200 Fund") to assist the Electric Restructuring Advisory Committee in the performance of their duties, as required pursuant to the provisions of this act. Any such expenditures shall be approved by

mutual agreement of the Governor, or his designee, the Chair of the Senate Energy, Environmental Resources and Regulatory Affairs Committee and the Chair of the House Energy and Utility Regulation Committee.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 862.1 of Title 82, unless there is created a duplication in numbering, reads as follows:

A. In addition to the powers, rights and privileges enumerated in Section 862 of Title 82 of the Oklahoma Statutes, the Grand River Dam Authority shall be exempt from the provisions of the:

1. Oklahoma Open Records Act, exclusively limited to customer proprietary information the Authority is contractually obligated to keep confidential; and

2. Oklahoma Open Meeting Act, exclusively limited to authorizing the Grand River Dam Authority Board of Directors to confer on matters pertaining to:

- a. coal or gas supply contracts, and
- b. rail or truck transportation contracts.

B. The Grand River Dam Authority is hereby authorized to accept its portion of any federal funds distributed by the Department of Public Safety for the purpose of providing boat safety functions. Such funds will be made available by the Department of Public Safety using a formula based on the number of permanently moored boats located on each of the eligible waters of this state pursuant to the provisions of Section 8 of this act.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-105.6A of Title 47, unless there is created a duplication in numbering, reads as follows:

In addition to the powers, duties and responsibilities authorized by Section 2-105.6 of Title 47 of the Oklahoma Statutes, the Department of Public Safety Lake Patrol is hereby directed and authorized to distribute all federal funds, available to the

Department for boat safety functions, using a formula based on the number of permanently moored boats located on each of the eligible waters of the state, which shall include the waters of the Grand River within the jurisdiction of the Grand River Dam Authority, unless otherwise directed by federal law.

SECTION 9. 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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