

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

HOUSE BILL HB2686:

Dorman

AS INTRODUCED

An Act relating to water and water rights; creating the Oklahoma Water Banking Act; defining terms; providing for authority of water banks; providing for determination of whether certain water rights are bankable; requiring certain approval; specifying conditions; restricting certain number of water banks; requiring certain reviews; providing for review team; providing for members and duties; requiring evaluations; making banked water not waste and not subject to beneficial usage requirements; providing for promulgating rules; providing for codification; providing an effective date; and declaring an emergency.

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 101.1 of Title 82, unless there is created a duplication in numbering, reads as follows:

This act shall be named and may be cited as the "Oklahoma Water Banking Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 101.2 of Title 82, unless there is created a duplication in numbering, reads as follows:

A. As used in the Oklahoma Water Banking Act:

1. "Bank boundary" means the geographic area where a water bank operates and conducts the functions of a water bank. A bank boundary may encompass more than one hydrologic unit;

2. "Bank charter" means a document that sets out the articles of incorporation and principal functions of a water bank;

3. "Bankable water right" means a water right that has been determined to be bankable pursuant to the Oklahoma Water Banking Act.

4. "Board" means the Oklahoma Water Resources Board;

5. "Conservation element" means the portion of a deposit that is taken out of use for the duration of the deposit and is not allowed to be withdrawn and used by subsequent users;

6. "Deposit", other than as used in "safe deposit account," refers to the deposit of a water right, or portion of a water right, in a water bank for the purpose of having the bank lease water from the water right, or portion of a water right, to another person or entity;

7. "Hydrologic unit" means a defined area from which water rights authorizing diversion of water from a source of supply may be deposited and from which water from the same source of supply may be leased, in accordance with the provisions of the Oklahoma Water Banking Act, without causing impairment of existing water rights or a significantly different hydrological effect to other users of water from the same source or hydraulically connected sources of supply;

8. "Linked water rights" means two or more water rights that authorize common points of diversion or a common place of use, or both;

9. "Safe Deposit account" means a personal account held in a water bank where unused water from a bankable water right is placed for use in future years; and

10. "Water bank" means a private not-for-profit corporation that:

- a. leases water from water rights that have been deposited in the bank, and
- b. provides safe deposit accounts.

B. A water bank may be a groundwater bank or a surface water bank, or both.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 101.3 of Title 82, unless there is created a duplication in numbering, reads as follows:

A. A water bank is authorized to enter into contracts with holders of water rights for deposit in the bank of all or a portion of any water right from a hydrologic unit within the bank boundary, subject to the following:

1. The bank shall accept for deposit only a water right, or portion of a water right, that has been determined to be a bankable water right pursuant to the Oklahoma Water Banking Act;

2. A deposit of a groundwater water right shall be for a period of not more than seven (7) years;

3. A deposit shall be subject to such terms and conditions as provided by the contract between the bank and the depositor, including penalty provisions for breach of any contract conditions; and

4. A deposit shall be subject to such terms and conditions, and approval by the Oklahoma Water Resources Board, as provided by rules of the Board.

B. A water bank is authorized to lease water from any water right, or portion of a water right, that has been deposited in the bank, subject to the following:

1. Any water leased must be used within the bank boundary and in the same hydrologic unit from which the water right authorizing diversion of the water is deposited;

2. Use of leased water shall be subject to all rules promulgated by the Board pursuant to its statutory authority;

3. A lease shall be subject to such terms and conditions as provided by the contract between the bank and the lessor, including penalty provisions for breach of any contract conditions;

4. A lease shall be subject to such terms and conditions, and approval by the Board, as provided by rules of the Board; and

5. A water bank's decision of whether or not to lease water shall not be based on the proposed use of the water unless otherwise restricted by the contract or rules of the Board.

C. A water bank shall provide safe deposit accounts where a holder of a water right may place unused water from the water right for future withdrawal, subject to the following:

1. A water right holder shall place in a safe deposit account only water from a water right that has been determined to be a bankable water right pursuant to the Oklahoma Water Banking Act;

2. Only water that was unused in the immediate past calendar year may be placed in a safe deposit account and the amount that shall be placed in such account shall be less than the total amount of unused water from the bankable water right in that year;

3. Only water from one water right shall be placed in a safe deposit account and water from a water right shall not be placed in more than one safe deposit account, except that water from linked water rights may be placed in a single safe deposit account;

4. Each calendar year that water remains in a safe deposit account, the amount of water held in the account shall decrease by a percentage established by the charter of the bank but in no case less than ten percent (10%) annually of all amounts placed in the account;

5. The total amount of water accumulated in a safe deposit account shall not exceed the maximum annual quantity authorized to be diverted under the water right or the aggregate maximum quantity authorized to be diverted under all linked water rights from which water is deposited in the account;

6. Use of water withdrawn from a safe deposit account shall be subject to rules of the Board pursuant to its statutory authority;

7. A safe deposit account shall be subject to such terms and conditions as provided by the contract between the bank and the account holder, including but not limited to penalty provisions for breach of any contract conditions;

8. A safe deposit account shall be subject to such terms and conditions, and approval by the Board, as provided by rules and of the Board; and

9. The operation of safe deposit accounts by the bank shall not result in an increase in the amount of net consumptive use of water in any hydrologic unit, computed on a long-term rolling average compared to a representative past period.

D. A water bank may provide services to facilitate the sale or lease of water rights pursuant to the restrictions of the Oklahoma Water Banking Act.

E. A water bank shall not own, buy or sell water rights.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 101.4 of Title 82, unless there is created a duplication in numbering, reads as follows:

Before a water right or portion of a water right may be accepted for deposit in a water bank or water from a water right shall be placed in a safe deposit account, the bank, with the assistance of the Oklahoma Water Resources Board, shall determine whether the water right is bankable, as follows:

1. The right is vested or a water rights permit has been issued; and

2. The right has not been abandoned or previously not put to beneficial use pursuant to Section 105.16 of Title 82 of the Oklahoma Statutes and is in good standing, based on past water usage and the holder is in compliance with the terms of the holder's permit and all applicable provisions of law and the rules of the Oklahoma Water Resources Board.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 101.5 of Title 82, unless there is created a duplication in numbering, reads as follows:

A. Before a water bank is authorized to operate in this state, the bank's charter must be approved by the Oklahoma Water Resources Board. Prior to approval, the body wishing to charter the bank shall submit to the Board the proposed bank charter and any other information required by rules of the Board to determine whether the bank may be chartered to operate in this state.

B. The Board shall approve the charter of a water bank only if the Board determines that:

1. The charter ensures that the operations and policies of the bank will be consistent with the provisions of the Oklahoma Water Banking Act, the state water plan and all applicable statutes, rules, findings and orders of the Board;

2. There is sufficient participation by water right holders and water users to make the operations of the bank practical and feasible;

3. The governing body of the bank has at least five members and is reasonably representative of public and private interests in water within the bank boundary;

4. The bank will not lease or accept for placement in a safe deposit account water from the same hydrologic unit as another chartered bank or accept for deposit a water right that authorizes diversion of water from the same hydrologic unit as another chartered water bank;

5. The charter ensures that, for each calendar year, the aggregate amount of all bank deposits, determined by multiplying the amount of each water right deposited by the length of time of the deposit and then adding together the resulting amounts for all deposits, will equal or exceed the sum of the aggregate amount of water leased by the bank. The sum of the aggregate amount of water

leased by the bank shall be determined by multiplying the amount of each lease by the length of time of the lease and then adding together the resulting amounts for all leases, plus the aggregate conservation element of all leases, determined by multiplying the conservation element of each lease by the length of the lease and then adding together the resulting amounts of all leases;

6. The charter ensures that the operations of the bank will not result in impairment of any existing water rights or an increase in depletion of severely depleted groundwater aquifers or stream water courses;

7. The charter ensures that the operations of the bank will result in a savings of ten percent (10%) or more in the total amount of groundwater consumed for a representative past period pursuant to water rights deposited in the bank;

8. The charter provides a procedure for resolution of complaints by bank participants and others impacted by the bank policies, practices and operations;

9. The charter ensures that the determination of the portion of a water right that is bankable shall be subject to the following:

- a. the determination shall be primarily based on a representative period of average water consumption for the hydrologic unit from which water is authorized to be diverted under the water right, and
- b. the method of determination shall not penalize past implementation of water conservation practices;

10. The charter ensures that the total amount of groundwater leased each year from each hydrologic unit does not exceed ninety percent (90%) of the historic average annual amount collectively diverted pursuant to all deposited water rights or portions of water rights from such unit for a representative past period; and

11. The charter provides a procedure for the dissolution of the bank, specifically stating how the remaining deposits and safe deposit accounts will be distributed.

C. Prior to July 1, 2005, not more than one water bank shall be chartered to operate in the state. Such water bank shall be a groundwater bank. On or after July 1, 2005, one additional water bank may be chartered to operate in the state. Such water bank shall be a surface water bank or a surface water and groundwater bank.

D. A water bank shall be chartered for a period of not more than seven (7) years, at which time the bank shall be subject to review in accordance with the Oklahoma Water Banking Act, to determine whether the bank's charter shall be extended.

E. Any amendment to the charter of a water bank must be approved by the Board prior to adoption of the amendment.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 101.6 of Title 82, unless there is created a duplication in numbering, reads as follows:

A. On or before February 10 of each year, each water bank shall submit to the Oklahoma Water Resources Board a report containing the following:

1. With regard to water rights or portions of water rights on deposit in the bank during the last year:

a. the total quantity of water authorized to be diverted annually pursuant to each such water right or portion of a water right,

b. the total quantity of water used, by purpose of use, and acres irrigated for the portion authorized to be used for irrigation, during the last year as a result of leases of such water rights or portions of water rights, and



- c. the total quantity of water used, by purpose of use, and acres irrigated for the portion authorized for irrigation pursuant to such water rights or portions of water rights during the two (2) years preceding the last year; and

2. With regard to water in each safe deposit account in the bank:

- a. an accounting of the total quantity of water placed in such accounts during the past year and a balance at year end,
- b. the total quantity of water used during the past year, and acres irrigated if an irrigation water right, from the account,
- c. the total quantity of water authorized to be diverted annually, the quantity actually used and the acres irrigated, if an irrigation water right, during the past year pursuant to the water rights or linked water rights related to such account, and
- d. the total quantity of water used and acres irrigated pursuant to such water rights during the two (2) years preceding the last year.

B. The Board may require owners of water rights deposited in a water bank, owners of water rights that have placed water in safety deposit accounts in a water bank and persons leasing water from a water bank to file annual water use reports.

C. The report required by this section shall be in the form prescribed by the Board.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 101.7 of Title 82, unless there is created a duplication in numbering, reads as follows:

A. Not later than five (5) years after the establishment of a water bank, the Oklahoma Water Resources Board shall convene a team to evaluate the operation of the bank. The team shall consist of:

1. The executive director of the Oklahoma Water Resources Board, or the director's designee, who shall serve as chair of the team;

2. The director of the Oklahoma Geological Survey, or the director's designee;

3. Two members who represent water right holders and water users who have used the bank's services, which members shall be selected by the governing body of the bank; and

4. Members selected by the Board as follows:

a. two members engaged in teaching or research at institutions of postsecondary education in subjects involving water resources, including but not limited to, water resources engineering and hydrology,

b. a member who is an economist with knowledge and experience in water resources,

c. one member having knowledge and experience in water law, and

d. two members having knowledge and experience in water policy issues and residing outside the bank boundary, who shall represent the public interest.

B. The office of the Oklahoma Water Resources Board shall provide staff assistance to the evaluation team.

C. Not more than one (1) year after a team is convened pursuant to this section, the team shall submit a report of its evaluation and recommendations to the Governor, the Board, the Secretary of Environment, the House standing committee on environment and natural resources and the Senate standing committee on Energy, Environment, and Communications or the successors to such committees regarding:

1. The operations and policies of the bank and whether they are consistent with the provisions of the Oklahoma Water Banking Act, the state water plan and all applicable statutes, rules, findings and orders of the Board;

2. Whether the operations of the bank are achieving the goals and objectives of water banking as set out in the Oklahoma Water Banking Act and whether changes could be made to further those goals and objectives;

3. Whether the charter of the bank should be extended;

4. The terms under which the bank's charter should be allowed to lapse, if the team recommends that the charter not be extended;

5. The bank's impact on the entire area of all hydrologic units any parts of which are encompassed in the bank's boundary; and

6. Any other matters that the team determines relevant to the future of water banking in the state.

D. Unless otherwise provided by law, the Board, in accordance with the recommendations of the team, may extend the charter of the bank for an additional period not to exceed seven (7) years or may allow the bank charter to lapse under the terms recommended by the team.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 101.8 of Title 82, unless there is created a duplication in numbering, reads as follows:

Depositing a water right in a water bank or placement of water in a safe deposit account in a water bank shall not constitute waste or be subject to usage requirements pursuant to Sections 105.16 and 1020.15 of Title 82 of the Oklahoma Statutes and any rules promulgated by the Board pursuant to the stream and groundwater laws of this state for failure to use water for a lawful, beneficial use for the term of the deposit or the placement.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 101.9 of Title 82, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Water Resources Board shall promulgate rules to administer and enforce the provisions of the Oklahoma Water Banking Act.

SECTION 10. Sections 1 through 8 of this act shall become effective November 1, 2004.

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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