

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 SENATE BILL 109

By: Bullard

4  
5  
6 AS INTRODUCED

7 An Act relating to water and water rights; defining  
8 terms; specifying applicability of act; requiring the  
9 Oklahoma Water Resources Board to create committees  
10 to conduct instream flow studies; establishing  
11 membership of committees; requiring Board to  
12 promulgate rules; authorizing committee to petition  
13 Board to conduct instream flow study in certain  
14 circumstances; requiring Board to authorize study in  
15 certain timeframe; specifying purpose of study;  
16 establishing duties and responsibilities of  
17 committee; requiring committee to submit result of  
18 study to certain entities; prohibiting implementation  
19 of recommendations of committee until passage of  
20 concurrent resolution; requiring Board to promulgate  
21 rules related to recommendations in certain  
22 circumstance; requiring Board to promulgate  
23 procedures to develop instream flow program;  
24 requiring Board to include instream flow in Oklahoma  
25 Comprehensive Water Plan updates; requiring Board to  
26 designate mechanisms for implementing instream flow  
27 in certain areas; requiring Board to coordinate with  
28 certain state entities; authorizing Board to make and  
29 enter into certain contracts and agreements;  
30 authorizing Board to receive and spend certain funds;  
31 authorizing Board to contract with certain agencies  
32 for certain purpose; construing provision; providing  
33 for codification; and providing an effective date.

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

1 SECTION 1. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 1085.97 of Title 82, unless  
3 there is created a duplication in numbering, reads as follows:

4 For the purposes of this act:

5 1. "Instream flow" means the water flows required to maintain  
6 the functions and resilience of freshwater stream systems and the  
7 needs of communities that depend on the healthy ecosystems;

8 2. "Instream flow program" means an ongoing program in which a  
9 treasured stream is monitored for compliance with instream flow  
10 determinations and biological assessments are conducted to maintain  
11 instream flows;

12 3. "Stakeholder" means any state or local government entity,  
13 tribal government, business entity, higher education institution,  
14 any individual or entity with an existing water permit affected by  
15 the instream flow study or any individual or entity who has  
16 successfully petitioned the Oklahoma Water Resources Board to become  
17 a stakeholder pursuant to the process prescribed in this act;

18 4. "Stakeholder committee" means a body of stakeholders, as  
19 designated by the Oklahoma Water Resources Board, tasked with  
20 determining what metrics should be included and what goals should be  
21 achieved by instream flows, reviewing data obtained from the  
22 instream flow program and suggesting improvements to the instream  
23 flow determination methodology and the instream flow program for  
24 each treasured stream in their area; and

1           5. "Treasured stream" means a watercourse in a definite,  
2 natural channel with defined beds and banks originating from a  
3 definite source or sources of supply.

4           SECTION 2.       NEW LAW       A new section of law to be codified  
5 in the Oklahoma Statutes as Section 1085.98 of Title 82, unless  
6 there is created a duplication in numbering, reads as follows:

7           A. The provisions of this act shall only apply to the following  
8 basins and rivers, to the extent they are located east of Interstate  
9 35:

- 10           1. The Blue River;
- 11           2. The Kiamichi Basin and River;
- 12           3. The Little River Basin;
- 13           4. The Mountain Fork Basin;
- 14           5. The Muddy Boggy Basin;
- 15           6. Spring Creek;
- 16           7. Snake Creek;
- 17           8. Pennington Creek; and
- 18           9. Any area designated as a scenic river pursuant to Section  
19 896.5 of Title 82 of the Oklahoma Statutes.

20           B. For the purpose of enabling the protection, conservation,  
21 recreational use and economic development of water resources and to  
22 protect the rights of the citizens of this state to use water for  
23 riparian and domestic use as established in Section 105.2 of Title  
24 82 of the Oklahoma Statutes, the Oklahoma Water Resources Board

1 shall create standing, regional stakeholder committees for the  
2 purpose of conducting instream flow studies on the basins and rivers  
3 specified in subsection A of this section.

4 C. Each stakeholder committee shall be comprised of nine (9)  
5 members including at least one member from each of the following:

- 6 a. the Department of Wildlife Conservation,
- 7 b. the United States Geological Survey,
- 8 c. the University of Oklahoma, Oklahoma State University,  
9 or the University of Tulsa,
- 10 d. the Grand River Dam Authority Scenic Rivers  
11 Operations,
- 12 e. a tribal nation located in the relevant region, and
- 13 f. stakeholders, as defined in this act, from the  
14 relevant region who have been selected by or  
15 successfully petitioned the Board to become a member  
16 of the committee.

17 The Board shall establish and promulgate rules for petitioning  
18 to become a stakeholder member in a stakeholder committee, which  
19 shall include but not be limited to an application process and an  
20 appeals process.

21 D. 1. Once the Board has designated a stakeholder committee  
22 and upon availability of funding, the committee is hereby empowered  
23 to petition the Board to initiate an instream flow study on the  
24 basin and/or river the committee represents. The Board shall

1 initiate a petitioned study within two (2) years of receiving  
2 funding.

3 2. The purpose of the study shall include identifying what  
4 methodology and metrics are to be measured and which biological  
5 assessments are to be made during each instream flow study and  
6 providing recommendations for the completion of instream flow  
7 determinations in the basin and/or river represented by the  
8 committee, monitoring the progress of each instream flow program in  
9 the represented basin and/or river and recommending changes to  
10 instream flow determinations, as necessary.

11 E. Duties and responsibilities of a stakeholder committee shall  
12 include:

13 1. Presenting an instream flow study work plan for approval to  
14 the Board prior to the commencement of any study including the  
15 methodology to be used and metrics to be measured by the study;

16 2. Presenting annual updates to the Board on the status of any  
17 instream flow study in the represented basin and/or river;

18 3. Analyzing data from any completed instream flow study and  
19 developing recommendations for the Board on developing an instream  
20 flow program; and

21 4. Submitting the final version of any completed instream flow  
22 study including the recommendations of the committee to the  
23 Governor, the President Pro Tempore of the Senate, the Speaker of  
24

1 the House of Representatives and the Board within six (6) months of  
2 the completion of the study.

3 F. The recommendations of the stakeholder committee are to be  
4 approved or disapproved by the Legislature by the proper passage of  
5 a concurrent resolution prior to implementation of any of the  
6 recommendations developed by the stakeholder committee. If the  
7 Legislature disapproves by concurrent resolution the recommendations  
8 of the stakeholder committee or the concurrent resolution fails to  
9 pass both houses of the Legislature, the stakeholder committee may  
10 amend and resubmit its recommendations to the entities specified in  
11 paragraph 4 of subsection E of this section. There shall be no  
12 limit on the number of times the committee may resubmit its  
13 recommendations.

14 G. If the Legislature approves by concurrent resolution the  
15 recommendations of the stakeholder committee, the Board is hereby  
16 directed to promulgate rules pursuant to the recommendations of the  
17 committee within one year of adoption of the concurrent resolution.

18 H. The Board is also authorized and directed:

19 1. To promulgate procedures for the development of an instream  
20 flow program as recommended in the final report of the Oklahoma  
21 Comprehensive Water Plan Instream Flow workgroup that meets the  
22 needs of treasured streams in the relevant stream system;

1           2. To include instream flow determination and the status of any  
2 ongoing instream flow in any updates to the Oklahoma Comprehensive  
3 Water Plan;

4           3. To designate voluntary, incentive based or conditional  
5 mechanisms for implementing instream flow on a petitioned stream  
6 including allowing those that hold permits to use stream water to  
7 voluntarily reallocate their permits in full or in part to instream  
8 flows of the stream to which the permit applies;

9           4. To cooperate with all relevant state agencies. All state  
10 institutions, agencies, departments and boards and officers are  
11 hereby authorized and directed to cooperate with the Board;

12           5. To make and enter into all contracts and agreements  
13 necessary or incidental to the performance of its duties and the  
14 execution of its powers under this act;

15           6. To receive and accept from this state or the United States  
16 of America or any agency or instrumentality thereof, grants of funds  
17 and to receive and accept aid or contributions from any source of  
18 either money, property, labor or other things of value to be held,  
19 used and applied only for the purposes for which such grants and  
20 contributions may be made; and

21           7. To expend income and funds of the Board in the exercise of  
22 any or all the powers granted to the Board under the provisions of  
23 this act.

1 I. The Oklahoma Water Resources Board may contract with a state  
2 or federal research agency for review of proposed instream flow  
3 study work plans and final instream flow studies.

4 J. Nothing in this act shall be construed to waive, amend,  
5 negate, reduce, define, affect or detract from the provisions of the  
6 State of Oklahoma, Choctaw Nation of Oklahoma, Chickasaw Nation,  
7 City of Oklahoma City Water Settlement August 2016 and any conformed  
8 Settlement Agreement, the Amended Storage Contract Transfer  
9 Agreement among City of Oklahoma City, Oklahoma City Water Utilities  
10 Trust and Oklahoma Water Resources Board, Oklahoma Water Resources  
11 Board Regular Permit No. 2007-17 or the Settlement Act (Water  
12 Infrastructure Improvements for the Nation Act, Pub. Law 114-322,  
13 Section 3608, 130 Stat. 1628, 1796-1814).

14 K. Nothing in this section shall be construed as affecting or  
15 intending to affect existing water permits, private water rights or  
16 the transferability of such, or prior riparian rights.

17 SECTION 3. This act shall become effective November 1, 2021.

18  
19 58-1-124 APW 12/8/2020 9:40:41 AM  
20  
21  
22  
23  
24  
25