ENROLLED SENATE
JOINT
RESOLUTION NO. 27

By: Wright and Taylor of the Senate

and

Matlock and Ferguson of the House

A Joint Resolution approving certain proposed permanent rules governing certain fees for regulated air pollutants pursuant to the Oklahoma Clean Air Act; disapproving rules providing for assessment of certain additional charge; prohibiting certain collection; providing for collection of certain fees; authorizing Department of Environmental Quality to utilize certain fees on air pollution programs; authorizing Department to credit certain fees; and declaring an emergency.

WHEREAS, in 1990 the Congress of the United States passed the Federal Clean Air Act amendments; and

WHEREAS, the Federal Clean Air Act amendments established presumptive fees for states without their own air quality programs; and

WHEREAS, in 1991 the Oklahoma Legislature enacted the Oklahoma Clean Air Act in furtherance of their determination to implement Oklahoma control over air quality programs in Oklahoma; and

WHEREAS, pursuant to subsection B of Section 2-5-113 of Title 27A, as a part of the Oklahoma Clean Air Act, the Legislature authorized the Department of Environmental Quality to establish an air quality fee of Ten Dollars ($10.00) per ton of regulated pollutants beginning in 1993. Thereafter, following rulemaking, the annual operating fee was to be Twenty-five Dollars ($25.00) or such amount either higher or lower as was determined to adequately reflect the demonstrated reasonable cost of the operating permit program; and

WHEREAS, on May 26, 1994, the Board of Environmental Quality promulgated rules setting the fee at Twenty-five Dollars ($25.00) per ton of regulated air pollutants beginning January 1, 1995, subject to an air quality fee study; and

WHEREAS, the purpose of the study was to demonstrate the state's ability to implement an air quality program in Oklahoma in lieu of the presumptive fees set forth in the Federal Clean Air Act; and

WHEREAS, the study was completed after extensive public hearings and recommendations by the Air Quality Council. The study recommended that the regulated air pollutant fees be approximately Fifteen Dollars and twenty cents ($15.20) in 1995 and approximately Eighteen Dollars and twenty cents ($18.20) in 1998; and

WHEREAS, permanent and emergency amendments to rules numbered and identified as OAC 252:100-8-2 and OAC 252:100-8-9(d)(1)(B) were duly adopted by the Environmental Quality Board on November 30, 1994, which reduced the Twenty-five Dollar ($25.00) regulated air

pollutants fee effective January 1, 1995, to Fifteen Dollars and nineteen cents ($15.19) per ton of regulated air pollutants; and

WHEREAS, OAC 252:100-8-9(d)(1)(B), in addition, authorized the Department of Environmental Quality to assess an additional charge of One Dollar ($1.00) per ton of regulated air pollutants if either the Tulsa City/County Health Department or the Oklahoma City/County Health Department failed to renew its contract to provide services necessary to implement the requirements of the Oklahoma Clean Air Act; and

WHEREAS, the time limits imposed by the Oklahoma Administrative Procedures Act expired before action could be taken on the emergency rules; and

WHEREAS, because the proposed emergency rules, based on statutory authorization, did not become effective, Section 2-5-113 of Title 27A of the Oklahoma Statutes and permanent rules promulgated thereto setting the fee at Twenty-five Dollars ($25.00) per ton of regulated air pollutants became effective January 1, 1995; and

WHEREAS, it is not the intent of the Legislature that fees in excess of the demonstrated reasonable cost be charged to Oklahoma businesses; and

WHEREAS, proposed permanent rules were duly submitted to the Legislature on December 9, 1994; and

WHEREAS, pursuant to Section 308 of Title 75 of the Oklahoma Statutes, the Legislature has reserved the right to waive its thirty-legislative-day review period and approve proposed permanent rules; and

WHEREAS, pursuant to Section 308 of Title 75 of the Oklahoma Statutes, the Legislature also reserves to itself the right to disapprove proposed permanent rules; and

WHEREAS, pursuant to Section 250.2 of Title 75 of the Oklahoma Statutes, the Legislature reserves the right to determine that a rule is not consistent with legislative intent, establish policy and designate the method for rule promulgation; and

WHEREAS, proposed permanent rule OAC 252:100-8-9(d)(1)(B), which relates to the increased charge of One Dollar ($1.00) per ton of regulated air pollutants if either the Tulsa City/County Health Department or the Oklahoma City/County Health Department fails to renew its contract to provide services necessary to implement the requirements of the Oklahoma Clean Air Act does not reflect the intent of the Legislature.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE 1ST SESSION OF THE 45TH OKLAHOMA LEGISLATURE:

SECTION 1. The Legislature hereby waives its thirty-legislative-day review period and approves in part OAC 252:100-8-2 and OAC 252:100-8-9, as submitted to the Legislature on December 9, 1994, which specifically provide for a fee of Fifteen Dollars and nineteen cents ($15.19) per ton of regulated air pollutants.

SECTION 2. The Legislature hereby disapproves in part OAC 252:100-8-9, submitted to the Legislature on December 9, 1994, which authorizes the Department of Environmental Quality to assess an additional charge of One Dollar ($1.00) per ton of regulated air pollutants if either the Tulsa City/County Health Department or the Oklahoma City/County Health Department fails to renew its contract to provide services necessary to implement the requirements of the Oklahoma Clean Air Act. However, the Department of Environmental Quality is hereby authorized to also utilize existing air fees on air pollution programs in such counties and is directed to credit, toward future fees that may become due, the fee payment of any person who has paid such $1.00 per ton annual operating fee in 1995 to the Department.

SECTION 3. The Department of Environmental Quality is hereby directed not to collect the fee of Twenty-five Dollars ($25.00) per

ton of regulated air pollutants set by Section 2-5-113 of Title 27A of the Oklahoma Statutes and permanent rules promulgated thereto due and owing by Oklahoma businesses between January 1, 1995, and the enactment of this resolution but shall assess and collect only the fees established by Section 1 of this resolution and OAC 252:100-8-9.

SECTION 4. 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 resolution shall take effect and be in full force from and after its passage and approval.