

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

HOUSE BILL NO. 1941

By: Morgan

AS INTRODUCED

An Act relating to public utilities; creating the Oklahoma Electric Utility Reform Act; stating purpose of the act; defining terms; providing for open access to electric distribution systems; directing electric utilities to provide open access; providing purchasing options for customers; authorizing the Corporation Commission to promulgate certain rules; authorizing the Commission to establish certain fees; limiting authority of the Commission to regulate certain entities; making effective date contingent upon certain occurrences; providing for levy of an electric sales gross receipts tax; making tax in lieu of other taxes; providing for apportionment of tax; providing for payment of tax; requiring sellers of electricity to file certain forms; requiring certain reports; requiring preservation of records; providing for semiannual payments in certain circumstances; amending 17 O.S. 1991, Sections 151 and 152, as last amended by Section 6, Chapter 315, O.S.L. 1994 (17 O.S. Supp. 1996, Section 152), which relate to regulation of public utilities; modifying definition; deleting certain statutory cite; amending 17 O.S. 1991, Sections

180.1 and 180.2, which relate to advertising by public utilities; modifying definitions; amending Section 43, Chapter 278, O.S.L. 1993, as amended by Section 1, Chapter 91, O.S.L. 1996 (17 O.S. Supp. 1996, Section 180.11), which relates to public utility assessment; adding certain utility subject to assessment; modifying definition; amending 17 O.S. 1991, Sections 250, 251, as amended by Section 16, Chapter 315, O.S.L. 1994, 252, 253 and 254 (17 O.S. Supp. 1996, Section 251), which relate to fuel adjustment clauses; modifying definitions; deleting certain definitions; deleting certain utilities from fuel adjustment clause requirements; amending 68 O.S. 1991, Section 1354, as last amended by Section 13, Chapter 278, O.S.L. 1994 (68 O.S. Supp. 1996, Section 1354), which relates to state sales tax levy; exempting electricity from sales tax; amending 68 O.S. 1991, Section 1357, as last amended by Section 3, Chapter 342, O.S.L. 1996 (68 O.S. Supp. 1996, Section 1357), which relates to tax exemptions; providing an exemption for the sales of certain electricity; amending 68 O.S. 1991, Section 2355, as amended by Section 1, Chapter 311, O.S.L. 1992 (68 O.S. Supp. 1996, Section 2355), which relates to state income tax; providing an exception for certain electric utility companies; amending 68 O.S. 1991, Section 2805, which relates to taxes in lieu of ad valorem taxes; making electric sales gross receipts tax an in lieu of tax; declaring affect of legislative action; providing for codification; providing for noncodification; repealing 17 O.S. 1991, Sections

157, 158.21, 158.21a, 158.22, 158.23, 158.24, 158.25, 158.26, 158.27, as amended by Section 1, Chapter 231, O.S.L. 1993, 158.28, 158.29, 158.30, 158.31 and 158.32 (17 O.S. Supp. 1996, Section 158.27), which relate to the Retail Electric Supplier Certified Territory Act; repealing 17 O.S. 1991, Sections 181, 182, 183, 184, 185, 186, 187, 188 and 189, which relate to securities of public utilities; repealing 17 O.S. 1991, Sections 256, 257, 258, 259, 260, 261 and 262, which relate to purchased power adjustment clauses for electric distribution cooperatives; repealing 18 O.S. 1991, Section 437.25, which relates to exemptions from excise and income taxes; repealing 68 O.S. 1991, Sections 1801, 1802, 1803, 1804, 1805, 1806 and 1807, which relate to taxation of rural electric cooperative corporations; 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 701 of Title 17, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 8 of this act shall be known and may be cited as the "Oklahoma Electric Utility Reform Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 702 of Title 17, unless there is created a duplication in numbering, reads as follows:

The purpose and intent of the Oklahoma Electric Utility Reform Act is to provide for the orderly deregulation of the electric utility industry within the State of Oklahoma. It is the intent of the Legislature that implementation of deregulation in electric retail markets and sales occur in a manner which is fair, equitable and beneficial to the retail consumers of electricity and to those companies comprising the electric utility industry. Implementation of this act shall not interfere with nor regulate the generation of electricity, the transmission of electricity or the sales of electricity at the wholesale level. The generation of electricity, the transmission of electricity and the sales of electricity at the wholesale level shall be subject only to such regulation as may be imposed by the Federal Energy Regulatory Commission.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 703 of Title 17, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Electric Utility Reform Act:

1. "Commission" means the Oklahoma Corporation Commission;
2. "Distribution access fee" means a fee to be charged to cover social costs and other appropriate costs associated with the operation of electric distribution systems and the providing of electric service to the retail customer, including capital and operating costs;
3. "Distribution electric utility" means an owner or operator of an electric distribution system;
4. "Electric distribution system" means the physical system of wires, poles and other equipment designed to deliver electricity to the ultimate consumer for consumption, excluding generation and transmission facilities;
5. "Exit fee" means a fee that may be charged when a consumer switches electric distribution systems, the purpose of which is to provide for the recovery of stranded costs and the investment cost

of losing a customer, and other appropriate costs the Commission may deem appropriate;

6. "Open access" means allowing every bona fide seller of electricity an equal nondiscriminatory opportunity to distribute electricity to retail customers over an electric distribution system;

7. "Social costs" means the costs of certain programs including, but not limited to, residential low usage rate programs, peak load reduction programs, energy audit programs, bad weather cutoff moratorium programs, medical priority programs, and other similar programs the Commission may require on a statewide basis for the public good;

8. "Stranded costs" means the cost of federally mandated contracts, the cost of preexisting debt or assets that are not competitive in the deregulated electric markets and other costs which may be recoverable as part of access fees or exit fees; and

9. "Transmission line" means the physical system designed to transport bulk electricity between generators and electric distribution systems.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 704 of Title 17, unless there is created a duplication in numbering, reads as follows:

A. Every seller of electricity in the retail market shall have nondiscriminatory open access to the electric distribution systems of every provider of electric distribution to retail customers in the State of Oklahoma. Such open access requires that every seller of electricity shall have the opportunity to provide electricity to every retail customer.

B. Every electric utility or other owner of an electric distribution system shall provide every seller of electricity access to its electric distribution system for the purpose of delivering

electricity to any retail customer connected to the electric distribution system.

C. Every retail customer shall have the opportunity to purchase electricity from any seller of electricity. Retail customers may also switch from one electric distribution system to another with the payment of an exit fee to cover the stranded cost incurred by the distribution system and a sum for the return on investment cost for a five-year period prior to the customer switching.

D. Open access shall be provided by every electric utility or other owner of an electric distribution system.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 705 of Title 17, unless there is created a duplication in numbering, reads as follows:

A. The Commission is authorized to promulgate rules to implement the provisions of this act.

B. The Commission shall have the authority to establish distribution access fees and exit fees to be charged by electric distribution systems. The Commission shall consider stranded costs and social costs as a component of the fees as deemed appropriate. The Commission shall require each electric distribution system to provide to the Commission the cost of assets and operating expenses for that electric distribution system. Such information shall be kept separate and apart from other assets and operations information the Commission may have.

C. The Commission shall have the authority to establish any appropriate fee to be applicable when a retail customer receives electric service directly from a transmission line. The Commission shall include stranded costs and social costs as a component in establishing such fees. The fees shall be in addition to any fees allowed by the Federal Energy Regulatory Commission for retail customers receiving electric service directly from a transmission line.

D. The Commission shall not have authority to regulate the generation or transmission of electricity or the wholesale sales of electricity.

E. The authority and jurisdiction of the Commission over electric utility companies shall be limited to implementing Sections 1 through 5 of this act. The owners of all electric distribution systems and all suppliers or sellers of electricity shall be subject to the provisions of this act.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 706 of Title 17, unless there is created a duplication in numbering, reads as follows:

The provisions of this act shall become effective when the Governor of the State of Oklahoma determines that the State of Oklahoma is required by federal law to deregulate the electric utility industry or when all states surrounding and touching upon the boundaries of the state have implemented retail wheeling, customer choice or open access to retail electric markets by sellers of electricity. Upon making such determination, the Governor shall issue an Executive Order stating that the event or events have occurred. The provisions of this act shall become effective on the first day of the next month following passage of one hundred eighty (180) days from the date of the Executive Order.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7001 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. There is hereby levied a gross receipts tax of four and three-fourths percent (4 3/4%) on the retail sales of electricity, to be remitted as provided for in Section 8 of this act. The tax shall be known as the electric sales gross receipts tax.

B. The electric sales gross receipts tax shall be in lieu of any and all ad valorem tax, state sales tax paid on the sale of electricity, state sales tax on the goods purchased by electric

utility companies and state income tax which might be otherwise paid by an electric utility company with regard to the generation, transmission, distribution or sale of electricity.

C. The electric sales gross receipts tax levied pursuant to this section shall be collected by the Oklahoma Tax Commission and apportioned as follows:

1. Fifty-seven and nine-tenths percent (57.9%) of the monies collected to be allocated to the common schools and vocational-technical schools of the state on the basis of average daily attendance;

2. Twenty-one and five-one-hundredths percent (21.05%) of the monies collected to be allocated among the counties of the state proportionately based on the amount of tax monies collected from each county when compared to the total amount of tax monies collected; and

3. Twenty-one and five-one-hundredths percent (21.05%) of the monies collected to be placed to the credit of the General Revenue Fund.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7002 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. Except as otherwise provided in this section, the electric sales gross receipts tax levied pursuant to the provisions of section 7 of this act shall be due and payable on the first day of each month immediately following the month of receipt.

B. For the purpose of ascertaining the amount of electric sales gross receipts tax payable pursuant to the provisions of Section 7 of this act, it shall be the duty of all persons selling electricity to deliver to the Oklahoma Tax Commission on or before the fifteenth day of each month, upon forms prescribed and provided by the Tax Commission, electric sales gross receipts tax reports, signed under oath which shall include the following information:

1. The name of the taxpayer;

2. The gross receipts from all electric sales during the preceding calendar month; and

3. Any other further information as the Oklahoma Tax Commission may require to correctly compute and collect the electric gross receipts tax levied pursuant to Section 7 of this act.

C. Each taxpayer shall compute and pay to the Oklahoma Tax Commission the required electric sales gross receipts tax for the preceding calendar month. The payment of the electric sales gross receipts tax shall accompany the reports required by this section. If the payment of the due and payable electric sales gross receipts tax is not postmarked or delivered to the Oklahoma Tax Commission on or before the fifteenth of the month, the electric sales gross receipts tax shall be considered delinquent from that date.

D. Every taxpayer required to make an electric sales gross receipts tax report and pay any electric sales gross receipts tax shall keep and preserve suitable records of the gross electric sales and other pertinent records and documents necessary to determine the amount of electric sales gross receipts tax due and to substantiate and prove the accuracy of such reports. All records shall be preserved for a period of at least three (3) years.

E. If the electric sales gross receipts tax due pursuant to Section 7 of this act is Five Hundred Dollars (\$500.00) or less for the preceding calendar year, the taxpayer may file semiannual reports and remit the electric sales gross receipts taxes due to the Oklahoma Tax Commission on or before January 15th and July 15th of each year for the preceding six-month period. If not paid on or before the fifteenth day of the month, the electric sales gross receipts tax shall be considered delinquent.

SECTION 9. AMENDATORY 17 O.S. 1991, Section 151, is amended to read as follows:

Section 151. The term "public utility" as used in Sections 151 through 155 of this title, shall be taken to mean and include every corporation, association, company, individuals, their trustees, lessees, or receivers, successors or assigns, except as hereinafter provided, and except cities, towns, or other bodies politic, that now or hereafter may own, operate, or manage any plant or equipment, or any part thereof, directly or indirectly, for public use, or may supply any commodity to be furnished to the public.

(a) For the conveyance of gas by pipeline.

(b) For the production, transmission, delivery or furnishing of heat or light with gas.

~~(c) For the production, transmission, delivery or furnishing electric current for light, heat or power.~~

~~(d)~~ For the transportation, delivery or furnishing of water for domestic purposes or for ~~power~~ hydro-power. Provided further that a corporation organized and existing not for profit pursuant to Title 18 of the Oklahoma Statutes, Sections 851-863, but for the purpose of developing and providing rural water supply and sewage disposal facilities to serve rural residents shall not be declared a public utility under this act, and shall be exempt in any and all respects from the jurisdiction and control of the Corporation Commission of this state.

The term "Commission" shall be taken to mean Corporation Commission of Oklahoma.

Provided, that, in Washington County, where any corporation, association, company, individuals, their trustees, lessees, or receivers, successors or assigns, is engaged in the private business of manufacturing any products other than those hereinbefore defined, and in the manufacture of such products operate and maintain private electric or water plants for its own power and electrical energy or water used in its manufacturing plant, without the right of eminent domain and without the use of streets, highways or public property,

it may contract upon terms and prices approved by Corporation Commission the sale of a bona fide surplus of electrical energy or water developed in such private plants to any public utility engaged in manufacturing and distributing electrical energy in Washington County, Oklahoma, without becoming a public utility. Provided further any city or town within a county having a population of over five hundred thousand (500,000) or any county having a population of over five hundred thousand (500,000), according to the 1970 Federal Census, which is a beneficiary of a public trust that has multiple beneficiaries and that includes within any or all of its boundaries a water supply and/or distribution system, or any portion thereof, shall have the authority to condemn all or any portion of any water supply and/or distribution system owned and/or operated and/or leased by a public trust within the limits of the condemning city or town or within the unincorporated areas of the condemning county; provided the power granted hereunder shall not be exercised until the condemning city, town or county shall have made provision to pay off all outstanding bonded indebtedness incurred by the public trust, including interest on the bonds to maturity of the bonds, or first call date, and premium, if any, to which the property to be condemned or the revenues therefrom has been pledged for security.

SECTION 10. AMENDATORY 17 O.S. 1991, Section 152, as last amended by Section 6, Chapter 315, O.S.L. 1994 (17 O.S. Supp. 1996, Section 152), is amended to read as follows:

Section 152. A. The Commission shall have general supervision over all public utilities, with power to fix and establish rates and to prescribe and promulgate rules, requirements and regulations, affecting their services, operation, and the management and conduct of their business; shall inquire into the management of the business thereof, and the method in which same is conducted.

B. 1. When any public utility subject to general supervision pursuant to this section ~~or to Section 158.27 of this title~~ shall

file with the Commission a request for review of its rates and charges, such request shall be given immediate attention.

2. In the exercise of this responsibility, the Commission shall complete any examination of such request for a review of its rates and charges within one hundred twenty (120) days from the date such application for review of its rates and charges is filed.

3. Public hearings on such matter must commence within forty-five (45) days of the end of such examination to be conducted by the Commission and in no event shall the conclusion of such examination of the rates and charges and the hearing conducted by the Commission exceed one hundred eighty (180) days from the date the request was filed.

4. If such request for review of the applicant's rates and charges has not been completed and an order issued within one hundred eighty (180) days from the date of filing of such application, some or all of the request for changes in the rates, charges, and regulations made in such application shall be immediately placed into effect and collected through new tariffs on an interim basis at the discretion of the applicant.

5. Should the Commission determine upon the completion of its examination and public hearings that a refund regarding the amount of interim relief is appropriate and necessary, the Commission shall order such refund including reasonable interest at the one-year U.S. Treasury bill rate accruing on that portion of the rate increase to be refunded for a period not to exceed ninety (90) days from the effective date of the rate increase which is being refunded.

C. The Commission shall have full visitorial and inquisitorial power to examine such public utilities, and keep informed as to their general conditions, their capitalization, rates, plants, equipments, apparatus, and other property owned, leased, controlled or operated, the value of same, the management, conduct, operation, practices and services; not only with respect to the adequacy,

security and accommodation afforded by their service, but also with respect to their compliance with the provisions of this act, and with the Constitution and laws of this state, and with the orders of the Commission.

SECTION 11. AMENDATORY 17 O.S. 1991, Section 180.1, is amended to read as follows:

Section 180.1 A. Advertising expenses shall not be included by a public utility in its operating expenses for ratemaking purposes.

B. For purposes of subsection A of this section:

1. "Advertising" means:

- a. the commercial use by a public utility of any media including, but not limited to, newspaper, magazine, radio and television to transmit a message to the public or to such public utility's customers, or
- b. the commercial use by a public utility of any printed material to transmit a message to a substantial number of members of the public or to a substantial number of the public utility's customers;

2. "Advertising" shall not mean:

- a. periodic publications or reports required by the bylaws of any public utility or electric cooperative,
- b. any communication with customers and the public which is strictly limited to energy conservation and education,
- c. any communication with customers and the public which provides telephone customers with instruction in the use of new, changed or improved features of their telephone service, or information about time periods or other conditions under which long distance calls may be made at reduced rates, or information which promotes the efficient use of the telephone network; provided that if the cost of providing such

information is to be treated as an operating expense by the public utility, it shall be clearly marked or identified to indicate the identity of the public utility and the fact that the cost is paid for by the ratepayers of the public utility,

- d. any communication with customers and the public for giving of information or notice required by law or otherwise necessary to warn of dangerous or hazardous conditions,
- e. routine classified telephone listings for the convenience of customers,
- f. informational inserts in customers' bills,
- g. any communication with customers and the public which informs existing and potential customers of the availability and conservation features of energy-efficient appliances and equipment,
- h. any communication with customers and the public which relates to industrial development, and
- i. any communication with customers and the public which is in furtherance of conservation or load management programs approved by the Corporation Commission;

3. "Public utility" means any individual, firm, association, partnership, corporation or any combination thereof, other than a municipal corporation or their lessees, trustees and receivers, owning or operating for compensation in this state equipment or facilities for:

- a. ~~producing, generating, transmitting, distributing, selling or furnishing electricity,~~
- ~~b.~~ the conveyance, transmission, reception or communications over a telephone system; provided that no authority not otherwise a public utility within the meaning of this section shall be deemed such solely

because of the furnishing or furnishing and maintenance of a private system, or

- ~~e.~~ b. transmitting directly or indirectly or distributing combustible hydrocarbon natural or synthetic natural gas for sale to the public; and

4. "Appliances" and "equipment" mean those individual appliances and space-conditioning equipment introduced by manufacturers after November 9, 1978, which operate at a level of efficiency at least twenty percent (20%) greater than appliances and space-conditioning equipment of the same energy type manufactured prior to that date.

SECTION 12. AMENDATORY 17 O.S. 1991, Section 180.2, is amended to read as follows:

Section 180.2 A. No public utility which has for one of its purposes the sale or distribution of energy may include promotional payments in its operating expenses for ratemaking purposes.

B. For purposes of subsection A of this section:

1. "Promotional payment" means any payment, gift or other remuneration made directly or indirectly by a public utility to or for the account of any builder or other person to encourage or induce such builder or other person to install appliances including, but not limited to, space heaters, heat pumps, clothes dryers, water heaters and stoves and equipment which will consume any energy sold or marketed by such public utility;

2. "Promotional payment" shall not mean payments, gifts or other remuneration made for conservation or load management programs or energy-efficient appliances and equipment introduction programs approved by the Corporation Commission;

3. "Public utility" means any individual, firm, association, partnership, corporation, or any combination thereof, other than a municipal corporation, or their lessees, trustees and receivers,

owning or operating for compensation in this state equipment or facilities for:

- a. ~~producing, generating, transmitting, distributing, selling or furnishing electricity, or~~
- b. transmitting directly or indirectly or distributing combustible hydrocarbon natural or synthetic natural gas for sale to the public; and

4. "Appliances" and "equipment" mean those individual appliances and space-conditioning equipment introduced by manufacturers after November 9, 1978, which operate at a level of efficiency at least twenty percent (20%) greater than appliances and space-conditioning equipment of the same energy type manufactured prior to that date.

SECTION 13. AMENDATORY Section 43, Chapter 278, O.S.L. 1993, as amended by Section 1, Chapter 91, O.S.L. 1996 (17 O.S. Supp. 1996, Section 180.11), is amended to read as follows:

Section 180.11 A. The Corporation Commission is hereby authorized to assess a fee upon each public utility and distribution electric utility to provide adequate funding to the Public Utility Division of the Oklahoma Corporation Commission for the regulation of public utilities and distribution electric utilities in this state and for providing for timely and expeditious reviews and completion of rate cases, and increased responsiveness to the needs of consumers and the regulated community.

B. 1. The assessment authorized by this section may, after excluding the amount allocated to interexchange telecommunications companies, resellers and operator service providers in paragraph 2 of this subsection, be borne by the affected public utilities and distribution electric utilities as follows:

- a. one-half shall be allocated based on that proportion which the total regulated Oklahoma jurisdictional gross operating revenues of each public utility and

distribution electric utility, excluding generation and transmission revenues, bear to the total regulated Oklahoma jurisdictional gross operating revenues of all public utilities and distribution electric utilities, excluding generation and transmission revenues, and

- b. one-half shall be allocated based on that proportion which the total number of regulated Oklahoma jurisdictional customers of each public utility and distribution electric utility bears to the total number of regulated Oklahoma jurisdictional customers of all public utilities and distribution electric utilities.

2. For interexchange telecommunications companies, resellers and operator service providers, the allocation may be based on the total regulated Oklahoma jurisdictional gross operating revenues that each interexchange telecommunications company, reseller or operator service provider bears in proportion to the total regulated Oklahoma jurisdictional gross operating revenue of all public utilities as applied to the total amount of the assessment to be collected from all public utilities for each year.

C. Any assessment levied pursuant to this section shall be recoverable as an operating expense to the public utility and distribution electric utility and shall be included in a utility's base rates or basic monthly service charge. The Corporation Commission shall take such action necessary to ensure recovery of the assessment by a public utility and distribution electric utility during the period for which it is levied.

D. The Corporation Commission may provide that each public utility shall pay any assessment levied pursuant to this section on a quarterly basis. Notice of the annual assessment shall be sent by certified mail, return receipt requested, to each public utility and

distribution electric utility. Each public utility and distribution electric utility shall pay the amount assessed to the Commission for deposit to the Public Utility Regulation Revolving Fund created in subsection E of this section. A public utility or distribution electric utility may, at its discretion, pay its annual assessment prior to the due date of the quarterly payments.

E. Any assessment collected by the Commission pursuant to this section shall be deposited in the Public Utility Regulation Revolving Fund hereby created. The fund shall be a continuing fund not subject to fiscal year limitations and shall consist of the monies received by the Commission from any assessment levied pursuant to the provisions of this section. All monies accruing to the credit of the fund are hereby appropriated and may be budgeted and expended by the Commission to pay the costs, both direct and indirect, of the Public Utilities Division incurred to regulate public utilities and distribution electric utilities. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

F. The Legislature shall establish budgetary limits for the Public Utility Division of the Corporation Commission. Any assessment levied pursuant to this section shall not exceed the amount of the budgetary limits and indirect costs for related support functions established by the Legislature for any fiscal year.

G. For purposes of this section, "public utility" means:

1. A public utility as defined by Section 151 of ~~Title 17 of the Oklahoma Statutes~~ this title, excluding those companies encompassed by paragraph ~~(d)~~ (c) of Section 151 of ~~Title 17 of the Oklahoma Statutes~~ this title; and

2. Any telephone or telecommunications company subject to Section 131 et seq. of ~~Title 17 of the Oklahoma Statutes~~ this title,

including interexchange telecommunications companies or such other telecommunications companies as defined by OCC Rule OAC 165:55-1-4, resellers as defined by OCC Rule OAC 165:56-1-4 and operator service providers as defined by OCC Rule OAC 165:57-1-4; and

~~3. Any association or cooperative corporation doing business under the Rural Electric Cooperative Act except for generation and transmission associations or cooperative corporations, or transmission associations or cooperative corporations.~~

H. It is the intention of the Legislature that this entire section is an amendment to and alteration of Sections 18 through 34, inclusive, of Article IX of the Constitution of the State of Oklahoma, as authorized by Section 35 of Article IX of said Constitution.

SECTION 14. AMENDATORY 17 O.S. 1991, Section 250, is amended to read as follows:

Section 250. As used in this act:

1. "Affiliated person, subsidiary, firm or corporation" means any person, subsidiary, firm or corporation which:
 - a. controls or is controlled by a public utility,
 - b. is controlled by an entity that also controls the utility, or
 - c. the utility or an entity controlling the utility has directly or indirectly the power to control;
2. "Commission" means any state regulatory body which has jurisdiction to regulate public utilities ~~or electric cooperatives;~~
3. "Emergency sales of gas" mean sales of natural gas made by a public utility or subsidiary thereof to one or more interstate pipelines or other out-of-state customer pursuant to federal law which exempts such transactions from the jurisdiction of the Federal Power Commission;
4. "Fair field price" means the value attributed to gas produced from wells owned by a public utility, or a subsidiary or

affiliate of a public utility, which shall be the going price paid by the utility, subsidiary or affiliate to others in the field where such production is located. If the utility, subsidiary or affiliate is not purchasing gas in such field, then such value shall be the price paid by the utility, subsidiary or affiliate in the nearest field where conditions are similar. The value to be attributed to residue gas owned by a public utility, or a subsidiary or affiliate of a public utility, from gas processing plants shall be the going price paid by the utility, subsidiary or affiliate to others from the same plant. If the utility, subsidiary or affiliate is not purchasing gas from said plant, then the value shall be the price paid by the utility, subsidiary or affiliate at the nearest plant where conditions are similar. However, the Commission may require an adjustment of the fair field price when it deems it proper to do so based on information before it;

5. "Fuel adjustment clause" means any mechanism which allows a public utility ~~or electric generating cooperative~~ to automatically adjust its charges above or below the base amount included in its rates, based upon changes in costs of ~~fuel for generation of electricity, purchased power or~~ purchased gas; and

6. ~~"Heat rate" means a measure of the efficiency of an electric generating station, computed by dividing the total British Thermal Unit content of the fuel burned by the resulting net kilowatt-hours generated;~~

7. ~~"Line loss" means the kilowatt-hours of electricity lost in the operation of an electric transmission or distribution system;~~

8. "Public utility" or "utility" means any individual, firm, association, partnership, corporation, or any combination thereof, other than a municipal corporation or their lessees, trustees and receivers, owning or operating for compensation in this state equipment or facilities for:

- a. ~~producing, generating, transmitting, distributing, selling or furnishing electricity, or~~
- b. transmitting, directly or indirectly, or distributing combustible hydrocarbon natural or synthetic natural gas for sale to the public or for wholesale, unless its wholesale rates are regulated by a federal agency, and

~~9. "Purchased power adjustment clause" means any mechanism which allows an electric public utility or electric distribution cooperative to adjust its charges above or below the base amount included in its rates based upon changes in costs of wholesale power purchased from others.~~

SECTION 15. AMENDATORY 17 O.S. 1991, Section 251, as amended by Section 16, Chapter 315, O.S.L. 1994 (17 O.S. Supp. 1996, Section 251), is amended to read as follows:

Section 251. A. No fuel adjustment clause of any kind shall hereafter be authorized by the Commission if such clause operates automatically to permit charges, assessments or amendments to existing rate schedules to be made which have not been first approved as provided by Sections 251 through 255 of this title, ~~except as otherwise provided for purchased power adjustments by electric distribution cooperatives in Sections 258 through 262 of this title.~~

B. If the Commission finds that the ~~changes in the price of fuels required for the generation of electricity by any electric public utility, that the changes in the price of purchased electricity required for distribution by any public utility or~~ changes in the price of purchased gas required for distribution by any gas utility, portends a likely and substantial threat to the ability of the utility to earn a reasonable rate of return, or are likely to cause the utility to have an excessive rate of return, or are likely to substantially impair the ability of the utility to

acquire adequate supplies of fuel or gas, the Commission may, after investigation and public hearing, approve suitable fuel adjustment clauses to be superimposed upon the existing rate schedules of the public utility. The Commission shall design the fuel adjustment clause to allow the ~~electric or~~ gas public utility to increase or decrease charges to the consumer according to changes in the cost of fuel, ~~purchased power~~ or purchased gas as compared to the price of such fuels ~~or power~~ as reflected in the base rates.

C. In the Commission's design of fuel adjustment clauses, the following rules shall apply:

1. For the purpose of determining fuel or gas costs, the price paid for the fuel or gas shall be computed at the actual cost of fuel or gas purchased from nonaffiliated persons, firms and corporations; and the actual cost of the production of fuel owned by the public utility or received from affiliated persons, firms and corporations, and ~~in the case of gas,~~ the fair field price for gas owned by the public utility or received from affiliated persons, firms or corporations;

2. The cost of fuel or gas shall be the price paid at the point of delivery into the utility system. In the event the transportation is performed by an affiliated person, firm or corporation as defined in this act which is not subject to the regulatory jurisdiction of the Commission, a regulatory agency of another state having jurisdiction, or the Federal Energy Regulatory Commission or successor agency, the charges made for transportation shall be, if allowed at all, only such as the Commission finds fair, just and reasonable, for purposes of this section. Transportation charges approved by this Commission, a regulatory agency of another state having jurisdiction, or by the Federal Energy Regulatory Commission, or successor agency shall be included for purposes of this section, if allowed by this Commission. The proposed adjustment charge shall not include the cost of transportation

beyond its point of delivery into that portion of the utility system regulated by the Corporation Commission unless there is presented to the Commission and it is persuaded by reliable evidence which clearly points to the conclusion that failure to do so will substantially threaten the ability of the utility to earn a reasonable rate of return;

~~3. The amount of electric energy produced by hydroelectric generating plants and purchased by the public utility proposing the adjustment charge shall be deducted from the amount of electric energy to which any fuel cost applies;~~

~~4. The actual efficiency or heat rate of electric public utilities shall be utilized and line losses shall be considered only if reliable evidence clearly points to the conclusion that failure to do so will substantially threaten the ability of the utility to earn a reasonable rate of return;~~

~~5. Fuel or gas removed from storage or stockpiles shall be taken into consideration on the basis of the last-in first-out method of inventory accounting; and~~

~~6.~~ 4. No estimated fuel adjustment shall be allowed.

SECTION 16. AMENDATORY 17 O.S. 1991, Section 252, is amended to read as follows:

Section 252. Whenever the Commission approves a fuel adjustment clause pursuant to this act, the clause shall apply to all similar public utilities affected by such increased costs. In addition, the Commission shall continually monitor and oversee the application of the fuel adjustment clauses. The Commission shall hold a public hearing thereon whenever it deems it necessary, but no less frequently than once every twelve (12) months. If the Commission finds that the charges or credits are not based upon the actual prices paid for fuel, or purchased gas ~~or purchased power~~, or are not properly computed in accordance with the applicable adjustment clause, it shall recompute the charges or credits and shall direct

the public utility to take such action as may be required to insure that the charges or credits properly reflect the actual prices paid for fuel, or purchased gas ~~or purchased power~~ and are properly computed in accordance with the applicable adjustment clause for the applicable period. The fuel adjustment clause may be amended upon a finding of changed circumstances by the Commission but shall not be wholly discontinued or suspended except by order of the Commission after notice and hearings for the utilities affected have been rendered.

SECTION 17. AMENDATORY 17 O.S. 1991, Section 253, is amended to read as follows:

Section 253. A. No proposed monthly fuel adjustment, ~~purchased power adjustment~~ or purchased gas adjustment shall become effective until after the Commission has had an opportunity to determine that the adjustment is calculated in accordance with the terms and conditions of the applicable fuel adjustment clause.

B. The Commission shall adopt regulations requiring each company as a necessary part of and condition to consideration of any adjustment application the monthly filing with the Commission, the President Pro Tempore of the Senate, the Speaker of the House of Representatives and the office of the Governor of the following:

1. A statement by each company subject to a fuel adjustment clause of the items and costs making up the average cost of fuel per million BTU and associated costs in dollars and cents or fraction thereof;

2. A summary of its fuel and gas purchase invoices and its computations of the proposed monthly fuel adjustment or purchased gas adjustment charges;

3. A summary of inventory records of fuel and gas going into and taken out of stockpile or storage;

4. A report containing the average unit price, the change in the average unit price, the volume purchased and a brief explanation of such unit cost increase; and

5. Any other records deemed necessary by the Commission ~~including, but not limited to, the heat rate efficiency and delivery efficiency for affected electric public utilities and the actual capacity factor for each generating facility utilized to produce electric power.~~

The records and computations filed shall be open to public inspection at the office of the Commission.

C. The Commission shall have five (5) business days after the records and computations prescribed in subsection B of this section have been filed to determine the necessity of an administrative proceeding thereon. If the Commission does not determine that a hearing is required, the proposed adjustment charge shall become effective as filed. In the event the Commission decides to hold a hearing on the information filed, it shall notify the public utility within such five-day period, set the matter for a public hearing to commence within thirty (30) business days thereafter, and give notice thereof at least three (3) days prior to the commencement of such hearing by publication in a newspaper of general circulation in the area served by such company. The issue to be determined at such hearing shall be either or both of the following determinations:

1. Whether charges or credits made under the fuel adjustment clauses are based upon the actual prices paid for fuel, or ~~or purchased gas or purchased power~~ and are properly computed in accordance with the applicable adjustment clause; or

2. Whether the fuel adjustment clauses should be discontinued, amended or suspended. In the event that the Commission determines that it is necessary to set any proposed adjustment charge for hearing, the proposed charge shall nevertheless become effective at the option of the utility following the expiration of the five-day

period after its records and computations have been filed, pending the Commission's finding with respect to such charges. However, in the discretion of the Commission, the effectiveness of the proposed charge may be conditioned upon the filing by the utility with the Commission of an assurance satisfactory to the Commission, which may include a bond with surety, of the utility's ability and willingness to refund to its customers any such amounts as the utility may collect from them in excess of the charge approved by the Commission in its finding. If the Commission has not approved, in whole or in part, or denied the proposed charge within a seven-day period subsequent to the commencement of such hearing, it shall promptly submit a written explanation of its failure to do so to the President Pro Tempore of the Senate, the Speaker of the House of Representatives and the office of the Governor.

SECTION 18. AMENDATORY 17 O.S. 1991, Section 254, is amended to read as follows:

Section 254. Each public utility subject to a fuel adjustment clause shall separately disclose in its customer bills the per unit cost of its fuel, ~~purchased power~~ or purchased gas adjustment. Upon request by any individual consumer, such utility shall also disclose for the month for which the request is received:

1. The actual amount of the adjustment in dollars and cents;
- and
2. The per unit rate and amount thereof in dollars and cents of fuel, ~~purchased power~~ or purchased gas included in its basic rate.

SECTION 19. AMENDATORY 68 O.S. 1991, Section 1354, as last amended by Section 13, Chapter 278, O.S.L. 1994 (68 O.S. Supp. 1996, Section 1354), is amended to read as follows:

Section 1354. Tax levy - Rate - Sales subject to tax.

1. There is hereby levied upon all sales, not otherwise exempted in the Oklahoma Sales Tax Code, Section 1350 et seq. of

this title, an excise tax of four and one-half percent (4.5%) of the gross receipts or gross proceeds of each sale of the following:

(A) Tangible personal property, except newspapers and periodicals;

(B) Natural or artificial gas, ~~electricity~~, ice, steam, or any other utility or public service, except electricity, water, sewage and refuse and those specifically exempt pursuant to the provisions of Section 1357 of this title;

(C) Transportation for hire to persons by common carriers, including railroads both steam and electric, motor transportation companies, taxicab companies, pullman car companies, airlines, and other means of transportation for hire, excluding:

(1) transportation services provided by a tourism service broker which are incidental to the rendition of tourism brokerage services by such broker to a customer regardless of whether or not such transportation services are actually owned and operated by the tourism service broker. For purposes of this subsection, "tourism service broker" means any person, firm, association or corporation or any employee of such person, firm, association or corporation which, for a fee, commission or other valuable consideration, arranges or offers to arrange trips, tours or other vacation or recreational travel plans for a customer, and

(2) transportation services provided by a funeral establishment to family members and other persons for purposes of conducting a funeral in this state;

(D) Telecommunications services that originate and terminate in this state and that originate or terminate in this state and are charged to the consumer's telephone number or account in this state regardless of where the billing for such service is made, and all local telecommunications service and rental charges, including all installation and construction charges and all service and rental

charges having any connection with transmission of any message or image.

(1) The term "telecommunications services" shall mean the transmission of any interactive, two-way electromagnetic communications, including voice, image, data and information, through the use of any medium such as wires, cables, microwaves, cellular radio, radio waves, light waves, or any combination of those or similar media, but shall not include the following:

- a. sales of value-added nonvocal services in which computer processing applications are used to act on the form, content, code, or protocol of the information to be transmitted, including charges for the storage of data or information for subsequent retrieval but not including services commonly known as voice mail,
- b. any interstate telecommunications service which is:
 - (1) rendered by a company for private use within its organization, or
 - (2) used, allocated, or distributed by a company to its affiliated group, or
- c. sales of any carrier access services, right of access services, telecommunications services to be resold, or telecommunications services used in the subsequent provision of, use as a component part of, or integrated into end-to-end telecommunications service,

(2) The term "telecommunications services" shall include, but not be limited to sales of any interstate telecommunications services which:

- a. entitle the subscriber to inward or outward calling respectively between a station associated with an access line in the local telephone system area or a station directly connected to any interexchange

carrier's facilities and telephone or radiotelephone stations in diverse geographical locations specified by the subscriber, or

- b. entitle the subscriber to private communications services which allow exclusive or priority use of a communications channel or group of channels between exchanges, and

(3) The term "interstate" includes any international service that either originates or terminates outside of the fifty (50) United States and the District of Columbia;

(E) Printing or printed matter of all types, kinds, or character and, except for services of printing, copying or photocopying performed by a privately owned scientific and educational library sustained by monthly or annual dues paid by members sharing the use of such services with students interested in the study of geology, petroleum engineering or related subjects, any service of printing or overprinting, including the copying of information by mimeograph, multigraph, or by otherwise duplicating written or printed matter in any manner, or the production of microfiche containing information from magnetic tapes or other media furnished by customers;

(F) Service of furnishing rooms by hotel, apartment hotel, public rooming house, motel, public lodging house, or tourist camp;

(G) Service of furnishing storage or parking privileges by auto hotels or parking lots;

(H) Computer hardware, software, coding sheets, cards, magnetic tapes or other media on which prewritten programs have been coded, punched, or otherwise recorded, including the gross receipts from the licensing of software programs;

(I) Foods, confections, and all drinks sold or dispensed by hotels, restaurants, or other dispensers, and sold for immediate

consumption upon the premises or delivered or carried away from the premises for consumption elsewhere;

(J) Advertising of all kinds, types, and characters, including any and all devices used for advertising purposes and the servicing of any advertising devices except those specifically exempt pursuant to the provisions of Section 1357 of this title;

(K) Dues or fees to clubs including free or complimentary dues or fees which have a value equivalent to the charge that would have otherwise been made, including any fees paid for the use of facilities or services rendered at a health spa or club or any similar facility or business;

(L) Tickets for admission to or voluntary contributions made to places of amusement, sports, entertainment, exhibition, display, or other recreational events or activities, including free or complimentary admissions which have a value equivalent to the charge that would have otherwise been made;

(M) Charges made for the privilege of entering or engaging in any kind of activity, such as tennis, racquetball, or handball, when spectators are charged no admission fee;

(N) Charges made for the privilege of using items for amusement, sports, entertainment, or recreational activity, such as trampolines or golf carts;

(O) The rental of equipment for amusement, sports, entertainment, or other recreational activities, such as bowling shoes, skates, golf carts, or other sports or athletic equipment;

(P) The gross receipts from sales from any vending machine without any deduction for rental to locate the vending machine on the premises of a person who is not the owner or any other deductions therefrom;

(Q) The gross receipts or gross proceeds from the rental or lease of tangible personal property, including rental or lease of personal property when the rental or lease agreement requires the

vendor to launder, clean, repair, or otherwise service the rented or leased property on a regular basis, without any deduction for the cost of the service rendered. If the rental or lease charge is based on the retail value of the property at the time of making the rental or lease agreement and the expected life of the property, and the rental or lease charge is separately stated from the service cost in the statement, bill, or invoice delivered to the consumer, the cost of services rendered shall be deducted from the gross receipts or gross proceeds;

(R) Flowers, plants, shrubs, trees, and other floral items, whether or not produced by the vendor, sold by persons engaged in florist or nursery business in this state, including all orders taken by an Oklahoma business for delivery in another state. All orders taken outside this state for delivery within this state shall not be subject to the taxes levied in this section;

(S) Tangible personal property sold to persons, peddlers, solicitors, or other salesmen, for resale when there is likelihood that this state will lose tax revenue due to the difficulty of enforcing the provisions of the Oklahoma Sales Tax Code because of:

- (1) the operation of the business;
- (2) the nature of the business;
- (3) the turnover of independent contractors;
- (4) the lack of place of business in which to display a permit or keep records;
- (5) lack of adequate records;
- (6) the fact that the persons are minors or transients;
- (7) the fact that the persons are engaged in service businesses; or

(8) any other reasonable reason;

(T) Any taxable services and tangible personal property including materials, supplies, and equipment sold to contractors for the purpose of developing and improving real estate even though said

real estate is intended for resale as real property, hereby declared to be sales to consumers or users, however, taxable materials, supplies and equipment sold to contractors as provided by this subsection which are purchased as a result of and subsequent to the date of a contract entered into either prior to the effective date of any law increasing the rate of sales tax imposed by this article, or entered into prior to the effective date of an ordinance or other measure increasing the sales tax levy of a political subdivision shall be subject to the rate of sales tax applicable, as of the date such contract was entered into, to sales of such materials, supplies and equipment if such purchases are required in order to complete the contract. Such rate shall be applicable to purchases made pursuant to the contract or any change order under the contract until the contract or any change order has been completed, accepted and the contractor has been discharged from any further obligation under the contract or change order or until two (2) years from the date on which the contract was entered into whichever occurs first. The increased sales tax rate shall be applicable to all such purchases at the time of sale and the contractor shall file a claim for refund before the expiration of three (3) years after the date of contract completion or five (5) years after the contract was entered into, whichever occurs earlier; however, the Oklahoma Tax Commission shall prescribe rules and regulations and shall provide procedures for the refund to a contractor of sales taxes collected on purchases eligible for the lower sales tax rate authorized by this subsection;

(U) Any taxable services and tangible personal property sold to persons who are primarily engaged in selling their services, such as repairmen, hereby declared to be sales to consumers or users.

2. All solicitations or advertisements in print or electronic media by Group Three vendors, for the sale of tangible property to be delivered within this state, shall contain a notice that the sale

is subject to Oklahoma sales tax, unless the sale is exempt from such taxation.

SECTION 20. AMENDATORY 68 O.S. 1991, Section 1357, as last amended by Section 3, Chapter 342, O.S.L. 1996 (68 O.S. Supp. 1996, Section 1357), is amended to read as follows:

Section 1357. ~~Exemption~~ Exemptions - General.

There are hereby specifically exempted from the tax levied by Section 1350 et seq. of this title:

1. Transportation of school pupils to and from elementary schools or high schools in motor or other vehicles;

2. Transportation of persons where the fare of each person does not exceed One Dollar (\$1.00), or local transportation of persons within the corporate limits of a municipality except by taxicabs;

3. Sales for resale to persons engaged in the business of reselling the articles purchased, whether within or without the state, provided that such sales to residents of this state are made to persons to whom sales tax permits have been issued as provided in this article. This exemption shall not apply to the sales of articles made to persons holding permits when such persons purchase items for their use and which they are not regularly engaged in the business of reselling; neither shall this exemption apply to sales of tangible personal property to peddlers, solicitors and other salesmen who do not have an established place of business and a sales tax permit. The exemption provided by this paragraph shall apply to sales of motor fuel or diesel fuel to a Group Five vendor, but the use of such motor fuel or diesel fuel by the Group Five vendor shall not be exempt from the tax levied by Section 1350 et seq. of this title. The purchase of motor fuel or diesel fuel is exempt from sales tax when the motor fuel is for shipment outside this state and consumed by a common carrier by rail in the conduct of its business. The sales tax shall apply to the purchase of motor fuel or diesel fuel in Oklahoma by a common carrier by rail when

such motor fuel is purchased for fueling, within this state, of any locomotive or other motorized flanged wheel equipment;

4. Sales of advertising space in newspapers and periodicals and billboard advertising service, and any advertising through the electronic media, including radio, television and cable television;

5. Eggs, feed, supplies, machinery and equipment purchased by persons regularly engaged in the business of raising worms, fish, any insect or any other form of terrestrial or aquatic animal life and used for the purpose of raising same for marketing. This exemption shall only be granted and extended to the purchaser when the items are to be used and in fact are used in the raising of animal life as set out above. Each purchaser shall certify, in writing, on the invoice or sales ticket retained by the vendor that the purchaser is regularly engaged in the business of raising such animal life and that the items purchased will be used only in such business. The vendor shall certify to the Oklahoma Tax Commission that the price of the items has been reduced to grant the full benefit of the exemption. Violation hereof by the purchaser or vendor shall be a misdemeanor;

6. Sale of natural or artificial gas ~~and electricity~~ when sold exclusively for residential use after December 31, 1980. Provided, nothing herein shall be construed as limiting or prohibiting cities and towns, and counties levying a tax pursuant to the provisions of Section 1370.2 of this title, from levying and collecting taxes on the sale of natural or artificial gas and electricity. Provided further, any sales tax levied by a city or town, or a county levying a tax pursuant to the provisions of Section 1370.2 of this title, on natural or artificial gas and electricity shall be in effect regardless of ordinance or contractual provisions referring to previously imposed state sales tax on such items;

7. In addition to the exemptions authorized by Section 1357.6 of this title, sales of medicines or drugs prescribed for the

treatment of human beings by a person licensed to prescribe the medicines or drugs. Provided, this exemption shall not apply to proprietary or patent medicines as defined by Section 353.1 of Title 59 of the Oklahoma Statutes;

8. Transfers of title or possession of empty, partially filled, or filled returnable oil and chemical drums to any person who is not regularly engaged in the business of selling, reselling or otherwise transferring empty, partially filled, or filled returnable oil drums;

9. Sales of one-way utensils, paper napkins, paper cups, disposable hot containers and other one-way carry out materials to a vendor of meals or beverages;

10. Sales of food or food products for home consumption which are purchased in whole or in part with coupons issued pursuant to the federal food stamp program as authorized by Sections 2011 through 2029 of Title 7 of the United States Code, as to that portion purchased with such coupons. The exemption provided for such sales shall be inapplicable to such sales upon the effective date of any federal law that removes the requirement of the exemption as a condition for participation by the state in the federal food stamp program;

11. Sales of food or food products to or by an organization which:

- a. is exempt from taxation pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), and which provides and delivers prepared meals for home consumption to elderly or homebound persons as part of a program commonly known as "Meals on Wheels" or "Mobile Meals", or
- b. is exempt from taxation pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code, 26

U.S.C., Section 501(c) (3), and which receives federal funding pursuant to the Older Americans Act of 1965, as amended, for the purpose of providing nutrition programs for the care and benefit of elderly persons;

12. Sales of tangible personal property or services to or by organizations which are exempt from taxation pursuant to the provisions of Section 501(c) (3) of the Internal Revenue Code, 26 U.S.C., Section 501(c) (3), and which are primarily involved in the collection and distribution of food and other household products to other organizations which are exempt from taxation pursuant to the provisions of Section 501(c) (3) of the Internal Revenue Code, 26 U.S.C., Section 501(c) (3), which facilitate the distribution of such products to the needy, except sales made in the course of business for profit or savings, competing with other persons engaged in the same or similar business;

13. Sales of food, food products, or clothing to children's homes which are located on church-owned property and are operated by organizations exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c) (3);

14. Sales of computers, data processing equipment, related peripherals and telephone, telegraph or telecommunications service and equipment for use in a qualified aircraft maintenance or manufacturing facility. For purposes of this paragraph, "qualified aircraft maintenance or manufacturing facility" means a new or expanding facility primarily engaged in aircraft repair, building or rebuilding whether or not on a factory basis, whose total cost of construction exceeds the sum of Five Million Dollars (\$5,000,000.00) and which employs at least two hundred fifty (250) new full-time-equivalent employees, as certified by the Oklahoma Employment Security Commission, upon completion of the facility. In order to qualify for the exemption provided for by this paragraph, the cost of said items purchased by the qualified aircraft maintenance or

manufacturing facility shall equal or exceed the sum of Two Million Dollars (\$2,000,000.00);

15. Sales of tangible personal property consumed or incorporated in the construction or expansion of a qualified aircraft maintenance or manufacturing facility as defined in paragraph 14 of this section. For purposes of this paragraph, sales made to a contractor or subcontractor that has previously entered into a contractual relationship with a qualified aircraft maintenance or manufacturing facility for construction or expansion of such a facility shall be considered sales made to a qualified aircraft maintenance or manufacturing facility;

16. Sales of any interstate telecommunications services which:

- a. entitle the subscriber to inward or outward calling respectively between a station associated with an access line in the local telephone system area or a station directly connected to any interexchange carrier's facilities and telephone or radiotelephone stations in diverse geographical locations specified by the subscriber, or
- b. entitle the subscriber to private communications services which allow exclusive or priority use of a communications channel or group of channels between exchanges;

17. Sales of railroad track spikes manufactured and sold for use in this state in the construction or repair of railroad tracks, switches, sidings and turnouts;

18. Sales of aircraft and aircraft parts provided such sales occur at a qualified aircraft maintenance facility. As used in this paragraph, "qualified aircraft maintenance facility" means a facility operated by an air common carrier at which there were employed at least two thousand (2,000) full-time-equivalent employees in the preceding year as certified by the Oklahoma

Employment Security Commission and which is primarily related to the fabrication, repair, alteration, modification, refurbishing, maintenance, building or rebuilding of commercial aircraft or aircraft parts used in air common carriage. For purposes of this paragraph, "air common carrier" shall also include members of an affiliated group as defined by Section 1504 of the Internal Revenue Code, 26 U.S.C., Section 1504; ~~and~~

19. Sales of machinery and equipment purchased and used by persons and establishments primarily engaged in computer services and data processing:

- a. as defined under Industrial Group Numbers 7372 and 7373 of the Standard Industrial Classification (SIC) Manual, latest version, which derive at least fifty percent (50%) of their annual gross revenues from the sale of a product or service to an out-of-state buyer or consumer, and
- b. as defined under Industrial Group Number 7374 of the SIC Manual, latest version, which derive at least eighty percent (80%) of their annual gross revenues from the sale of a product or service to an out-of-state buyer or consumer.

Eligibility for the exemption set out in this paragraph shall be established, subject to review by the Tax Commission, by annually filing an affidavit with the Tax Commission stating that the facility so qualifies and such information as required by the Tax Commission. For purposes of determining whether annual gross revenues are derived from sales to out-of-state buyers or consumers, all sales to the federal government shall be considered to be to an out-of-state buyer or consumer; and

20. Sales of tangible personal property consumed or incorporated in the generation, transmission, distribution or sale

of electricity by electric utility companies subject to the electric sales gross receipts tax pursuant to Section 7 of this act.

SECTION 21. AMENDATORY 68 O.S. 1991, Section 2355, as amended by Section 1, Chapter 311, O.S.L. 1992 (68 O.S. Supp. 1996, Section 2355), is amended to read as follows:

Section 2355. A. Individuals. For all taxable years beginning after December 31, 1989, a tax is hereby imposed upon the Oklahoma taxable income of every resident or nonresident individual, which tax shall be computed at the option of the taxpayer under one of the two following methods:

METHOD 1. Single individuals and married individuals filing separately not deducting federal income tax:

1/2% tax on first \$1,000.00 or part thereof

1% tax on next \$1,500.00 or part thereof

2% tax on next \$1,250.00 or part thereof

3% tax on next \$1,150.00 or part thereof

4% tax on next \$1,300.00 or part thereof

5% tax on next \$1,500.00 or part thereof

6% tax on next \$2,300.00 or part thereof

7% tax on the remainder.

Married individuals filing jointly and surviving spouse to the extent and in the manner that a surviving spouse is permitted to file a joint return under the provisions of the Internal Revenue Code and heads of households as defined in the Internal Revenue Code not deducting federal income tax:

1/2% tax on first \$2,000.00 or part thereof

1% tax on next \$3,000.00 or part thereof

2% tax on next \$2,500.00 or part thereof

3% tax on next \$2,300.00 or part thereof

4% tax on next \$2,400.00 or part thereof

5% tax on next \$2,800.00 or part thereof

6% tax on next \$6,000.00 or part thereof

7% tax on the remainder.

METHOD 2. Single individuals and married individuals filing separately deducting federal income tax:

1/2% tax on first \$1,000.00 or part thereof

1% tax on next \$1,500.00 or part thereof

2% tax on next \$1,250.00 or part thereof

3% tax on next \$1,150.00 or part thereof

4% tax on next \$1,200.00 or part thereof

5% tax on next \$1,400.00 or part thereof

6% tax on next \$1,500.00 or part thereof

7% tax on next \$1,500.00 or part thereof

8% tax on next \$2,000.00 or part thereof

9% tax on next \$3,500.00 or part thereof

10% tax on the remainder.

Married individuals filing jointly and surviving spouse to the extent and in the manner that a surviving spouse is permitted to file a joint return under the provisions of the Internal Revenue Code and heads of households as defined in the Internal Revenue Code deducting federal income tax:

1/2% tax on the first \$2,000.00 or part thereof

1% tax on the next \$3,000.00 or part thereof

2% tax on the next \$2,500.00 or part thereof

3% tax on the next \$1,400.00 or part thereof

4% tax on the next \$1,500.00 or part thereof

5% tax on the next \$1,600.00 or part thereof

6% tax on the next \$1,250.00 or part thereof

7% tax on the next \$1,750.00 or part thereof

8% tax on the next \$3,000.00 or part thereof

9% tax on the next \$6,000.00 or part thereof

10% tax on the remainder.

B. Nonresident aliens. In lieu of the rates set forth in subsection A above, there shall be imposed on nonresident aliens, as

defined in the Internal Revenue Code, a tax of eight percent (8%) instead of thirty percent (30%) as used in the Internal Revenue Code, with respect to the Oklahoma taxable income of such nonresident aliens as determined under the provision of the Oklahoma Income Tax Act.

Every payer of amounts covered by this subsection B shall deduct and withhold from such amounts paid each payee an amount equal to eight percent (8%) thereof. Every payer required to deduct and withhold taxes under this subsection shall for each quarterly period on or before the last day of the month following the close of each such quarterly period, pay over the amount so withheld as taxes to the Tax Commission, and shall file a return with each such payment. Such return shall be in such form as the Tax Commission shall prescribe. Every payer required under this subsection to deduct and withhold a tax from a payee shall, as to the total amounts paid to each payee during the calendar year, furnish to such payee, on or before January 31, of the succeeding year, a written statement showing the name of the payer, the name of the payee and his social security account number, if any, the total amount paid subject to taxation, and the total amount deducted and withheld as tax and such other information as the Tax Commission may require. Any payer who fails to withhold or pay to the Tax Commission any sums herein required to be withheld or paid shall be personally and individually liable therefor to the State of Oklahoma.

C. Corporations. For all taxable years beginning after December 31, 1989, a tax is hereby imposed upon the Oklahoma taxable income of every corporation doing business within this state or deriving income from sources within this state in an amount equal to six percent (6%) thereof.

There shall be no additional Oklahoma income tax imposed on accumulated taxable income or on undistributed personal holding

company income as those terms are defined in the Internal Revenue Code.

D. Certain foreign corporations. In lieu of the tax imposed in the first paragraph of subsection C, for all taxable years beginning after December 31, 1989, there shall be imposed on foreign corporations, as defined in the Internal Revenue Code, a tax of six percent (6%) instead of thirty percent (30%) as used in the Internal Revenue Code, where such income is received from sources within Oklahoma, in accordance with the provisions of the Internal Revenue Code and the Oklahoma Income Tax Act.

Every payer of amounts covered by this subsection D shall deduct and withhold from such amounts paid each payee an amount equal to six percent (6%) thereof. Every payer required to deduct and withhold taxes under this subsection shall for each quarterly period on or before the last day of the month following the close of each such quarterly period, pay over the amount so withheld as taxes to the Tax Commission, and shall file a return with each such payment. Such return shall be in such form as the Tax Commission shall prescribe. Every payer required under this subsection to deduct and withhold a tax from a payee shall, as to the total amounts paid to each payee during the calendar year, furnish to such payee, on or before January 31, of the succeeding year, a written statement showing the name of the payer, the name of the payee and his social security account number, if any, the total amounts paid subject to taxation, the total amount deducted and withheld as tax and such other information as the Tax Commission may require. Any payer who fails to withhold or pay to the Tax Commission any sums herein required to be withheld or paid shall be personally and individually liable therefor to the State of Oklahoma.

E. Fiduciaries. A tax is hereby imposed upon the Oklahoma taxable income of every trust and estate at the same rates as are provided in subsection A of this section for single individuals.

Fiduciaries are not allowed a deduction for any federal income tax paid.

F. Tax rate tables. For all taxable years beginning after December 31, 1991, in lieu of the tax imposed by subsection A of this section, there is hereby imposed for each taxable year on the taxable income of every individual, whose taxable income for such taxable year does not exceed the ceiling amount, a tax determined under tables, applicable to such taxable year which shall be prescribed by the Tax Commission and which shall be in such form as it determines appropriate. In the table so prescribed, the amounts of the tax shall be computed on the basis of the rates prescribed by subsection A of this section. For purposes of this subsection, the term ceiling amount means with respect to any taxpayer, the amount determined by the Tax Commission for the tax rate category in which such taxpayer falls.

G. Upon the effective date of this act, electric utility companies subject to the electric sales gross receipts tax levies pursuant to Section 7 of this act shall not be subject to the tax imposed pursuant to subsection C of this section for income derived from the generation, transmission, distribution or sales of electricity.

SECTION 22. AMENDATORY 68 O.S. 1991, Section 2805, is amended to read as follows:

Section 2805. The following fees or taxes levied by the provisions of the Oklahoma Statutes shall be in lieu of ad valorem tax, whether in lieu of real property tax, personal property tax, or both as provided by law:

1. The registration fees and taxes imposed upon aircraft by Section 251 et seq. of Title 3 of the Oklahoma Statutes;

2. Registration fees for motor vehicles as provided in Section 1103 of Title 47 of the Oklahoma Statutes, except as otherwise specifically provided;

3. The fee imposed upon transfers of used vehicles in lieu of the ad valorem tax upon inventories of used motor vehicles by Section 1137.1 of Title 47 of the Oklahoma Statutes;

4. The registration and license fees imposed upon vessels and motors pursuant to the Oklahoma Vessel and Motor Registration Act, Section 4001 et seq. of Title 63 of the Oklahoma Statutes;

5. The taxes levied upon the gross production of substances pursuant to Section 1001 of this title;

6. The taxes levied upon the gross production of substances pursuant to Section 1020 of this title;

7. The tax imposed upon electric sales gross receipts pursuant to Section ~~1803~~ 7 of this ~~title~~ act;

8. The tax imposed upon certain textile products pursuant to Section 2001 of this title;

9. The tax imposed upon certain freight cars pursuant to Section 2202 of this title;

10. The tax imposed on certain parts of the inventories, both new and used items, owned and/or possessed for sale by retailers of farm tractors and other equipment pursuant to Sections ~~4~~ 5401 through ~~4~~ 5404 of this ~~act~~ title;

11. The tax imposed upon inventories of new vehicles and certain vessels pursuant to Section 5301 of this title; and

12. Such other fees or taxes as may be expressly provided by law to be in lieu of ad valorem taxation.

SECTION 23. Pursuant to the authority vested in the Legislature by Section 35 of Article IX of the Constitution of the State of Oklahoma, the Legislature hereby expressly declares that Sections 1 through 6 of this act is an amendment to, and alteration of, Sections 18 through 34 inclusive of Article IX of the Constitution of the State of Oklahoma.

SECTION 24. NONCODIFICATION Section 23 of this act shall not be codified in the Oklahoma Statutes.

SECTION 25. REPEALER 17 O.S. 1991, Sections 157, 158.21, 158.21a, 158.22, 158.23, 158.24, 158.25, 158.26, 158.27, as amended by Section 1, Chapter 231, O.S.L. 1993, 158.28, 158.29, 158.30, 158.31, 158.32, 181, 182, 183, 184, 185, 186, 187, 188, 189, 256, 257, 258, 259, 260, 261 and 262 (17 O.S Supp. 1996, Section 158.27), are hereby repealed.

SECTION 26. REPEALER 18 O.S. 1991, Section 437.25, is hereby repealed.

SECTION 27. REPEALER 68 O.S. 1991, Sections 1801, 1802, 1803, 1804, 1805, 1806 and 1807, are hereby repealed.

SECTION 28. This act shall become effective July 1, 1997.

SECTION 29. 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.

46-1-5919 KB