

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 440

By: Easley of the Senate
and
Glover of the House

COMMITTEE SUBSTITUTE

(Electric Utility Task Force - Oklahoma Tax

Commission - tax credits -

effective date)

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

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

Section 21-222. There is hereby declared a moratorium on all
municipal condemnation proceedings instituted pursuant to Section
437.2 of Title 18 of the Oklahoma Statutes, initiated prior to ~~July~~
~~1, 2002~~ the implementation of full retail consumer choice. The
moratorium shall also apply to all municipalities or public trusts
thereof which attempt to condemn the facilities of electric public
utilities or rural electric cooperatives for the purpose of
utilizing such facilities for the delivery of electric power and
energy. ~~If~~ The moratorium shall remain in effect until the
implementation of full retail consumer choice in the supply of
electric power and energy is implemented in this state on or before
July 1, 2002,. Upon the implementation of full retail consumer
choice the municipal condemnation provisions authorizing
municipalities with electric utilities to condemn the facilities of

rural electric cooperatives contained in Section 437.2 of Title 18 of the Oklahoma Statutes is hereby repealed. ~~If retail consumer choice is not implemented in this state on or before July 1, 2002, this moratorium shall become null and void.~~ The moratorium provided for herein shall have prospective and retroactive application.

SECTION 2. AMENDATORY Section 6, Chapter 162, O.S.L. 1997, as last amended by Section 6, Chapter 391, O.S.L. 1998 (17 O.S. Supp. 2000, Section 190.6), is amended to read as follows:

Section 190.6 A. There is hereby created the ~~Joint~~ Utility Advisory Task Force which shall be composed of ~~fourteen (14)~~ seven (7) members ~~of the Oklahoma Legislature, seven each to be selected by the President Pro Tempore of the Senate and the Speaker of the House of Representatives~~ as follows: the Chair of the Senate Energy, Environmental Resources and Regulatory Affairs Committee, the Chair of the House Energy and Utility Regulation Committee, the Governor or a designee, the Attorney General or a designee, the Chair of the Corporation Commission or a designee, the State Treasurer or a designee and the Superintendent of Public Instruction or a designee. The chair of the task force shall be the chair of the Senate Energy, Environmental Resources and Regulatory Affairs Committee and the vice-chair of the task force shall be the chair of the House Energy, ~~Environment and Natural Resources~~ Utility Regulation Committee.

B. ~~The chair or vice-chair shall record the members present at each meeting of the task force. If any member is absent from two consecutive meetings, the position of such member may be declared vacant and the position reappointed by the original appointing authority.~~

C. A majority of the members serving on the task force shall constitute a quorum. The task force shall meet at such times and places as it deems necessary to perform its duties as specified herein. Meetings shall be at the call of the chair.

~~D. The task force may appoint advisory councils made up of representatives of various utility companies, regulatory agencies, industrial and residential consumers or any other persons as needed to advise the task force in any matter they deem to be appropriate and necessary.~~

~~E. C.~~ Members of the task force shall be reimbursed by their ~~appointing authorities~~ respective agencies for necessary travel expenses incurred in the performance of their duties in accordance with Section 456 of Title 74 of the Oklahoma Statutes. ~~Advisory council members appointed pursuant to this section shall not be authorized to claim travel expenses~~ or in accordance with the policies of their agencies.

~~F. D.~~ The Senate and the House of Representatives shall provide such staff support as is required by the task force and the task force shall be authorized to employ any legal counsel, independent consultants, or other persons as necessary ~~and approved by the President Pro Tempore of the Senate and the Speaker of the House of Representatives.~~

~~G. E.~~ The duties of the task force shall be to ~~direct and oversee the studies as provided for in Sections 190.4 and 190.5 of this title and may include, but shall not be limited to, any duties previously authorized by Enrolled Senate Joint Resolution No. 29 of the 1st Session of the 45th Oklahoma Legislature and Senate Concurrent Resolution No. 37 of the 2nd Session of the 45th Oklahoma Legislature and any other duties required to carry out the provisions and directives of this act. The task force may make final recommendations to the Governor and the Legislature~~ examine the report on electric issues submitted to the Legislature on October 1, 1999, the opportunities to encourage development of zero-emission electric generation facilities and the current management and control of electric services by state regulatory authorities, rural electric cooperative boards of directors, state power

authorities and municipal corporations or public trusts thereof in this state to advise the Governor and Legislature of all issues concerning restructuring the electric industry in this state. The task force shall also examine the best management and control practices adopted by other states and identify and recommend the practices that may benefit all consumers, business entities and political subdivisions of this state. The task force shall provide a final report to the Governor and the Legislature no later than November 1, 2002. The Legislature shall review any reports developed by the ~~Joint Electric Utility Advisory~~ Task Force. ~~Final authority relating to the implementation of any recommended statutory revisions shall reside with the Legislature.~~

Notwithstanding any other provision of law, retail choice of electricity providers shall not be implemented in this state until the task force recommendations have been received by the Governor and the Legislature and the Legislature has enacted enabling legislation to implement such retail choice in this state.

H. E.. The task force shall remain in effect and operate as herein directed until its termination which shall be no later than January 1, ~~2003~~ 2005. The task force may elect, by majority vote, to terminate its operations at an earlier date if it deems such action appropriate.

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

Section 190.7 A. Electric distribution providers governed by the Retail Electric Supplier Certified Territory Act, Section 158.21 et seq. of this title or municipal corporations or beneficial trusts thereof owning or operating a retail electric distribution system or the Grand River Dam Authority shall not furnish retail electric service to an electric consuming facility which is currently being served, or which was being served and the permanent electric

facilities are in place to render such service, by a municipal corporation or beneficial trust thereof, a rural electric cooperative or an investor-owned electric utility or the Grand River Dam Authority until full implementation of retail consumer choice, ~~July 1, 2002, unless the entities involved have agreed by mutual consent, in writing, to such transaction.~~ For the purpose of this section, "electric distribution providers" shall mean the same as "retail electric service distributors" as defined by Section 190.3 of this title.

B. Any municipal corporation or beneficial trust thereof offering retail electric distribution service from a municipally or trust-owned electric distribution system that decides not to participate in the provisions of this act as outlined in Section 190.3 of this title shall be prohibited from extending a retail electric distribution primary feeder system beyond its corporate limits with the exception that it may continue to offer retail electric distribution service through the addition of secondary service drops from the primary feeder system it owned outside the corporate limits of such municipality on April 25, 1997. Provided, however, nothing contained in this section shall be construed to prohibit system maintenance, repairs or upgrades to such primary distribution feeder system outside the corporate limits except that secondary service drops shall not be upgraded to primary distribution lines.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2357.32A of Title 68, unless there is created a duplication in numbering, reads as follows:

A. For tax years beginning on or after January 1, 2001, there shall be allowed a credit against the tax imposed by Section 2355 of Title 68 of the Oklahoma Statutes to an entity granted a permit to construct, operate, and produce electricity from zero-emission facilities. As used in this act:

1. "Electricity from zero-emission facilities" means electricity that is exclusively produced by facilities placed in operation after the effective date of this act utilizing renewable resources and such production results in no pollution or emissions that are or may be harmful to the environment, as certified by the Department of Environmental Quality; and

2. "Renewable resources" means resources that are naturally regenerated and include, but are not limited to:

- a. sun,
- b. wind,
- c. moving water,
- d. geothermal energy,
- e. landfill and mine-based methane gas, and
- f. waste and sustainable bio-mass.

B. The amount of the credit shall be two and one-half cents (\$0.025) for each kilowatt hour of electricity produced by such entity from a zero-emission facility located in this state during the fifteen-year period beginning on the date the facility is placed in service and electricity is produced for retail consumption.

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

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

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

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2357.33B of Title 68, unless there is created a duplication in numbering, reads as follows:

A. For tax years beginning on or after January 1, 2001, there shall be allowed a credit against the tax imposed by Section 2355 of Title 68 of the Oklahoma Statutes to a taxpayer for purchases of electricity from zero-emission facilities as defined in Section 1 of this act.

B. The amount of the credit shall be two and one-half cents (\$0.025) for each kilowatt hour of electricity purchased which was produced by zero-emission facilities.

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

D. Any nontaxable entities, including agencies of the State of Oklahoma or political subdivisions thereof, shall be eligible to establish a transferable tax credit in the amount provided in subsection B of this section. Such tax credit shall be a property right available to said state agency or political subdivision of this state to transfer or sell to a taxable entity, whether individual or corporate, who shall have an actual or anticipated income tax liability under Section 2355 of Title 68 of the Oklahoma Statutes. These tax credit provisions are authorized as an incentive to the State of Oklahoma, its agencies and political subdivisions to encourage expenditure of funds in the utilization of electricity from zero-emission facilities as defined in Section 1 of this act.

E. The amount of the credit authorized by the provisions of subsection D of this section shall be freely transferable at any time following the year of qualification. Any person to whom or to which a tax credit is transferred shall have only such rights to claim and use the credit under the terms that would have applied to the entity by whom or by which the tax credit was transferred. The provisions of this subsection shall not limit the ability of a tax credit transferee to reduce the tax liability of the transferee regardless of the actual tax liability of the tax credit transferor for the relevant taxable period. The transferor originally allowed the credit and the subsequent transferee shall jointly file a copy of the written transfer agreement with the Oklahoma Tax Commission within thirty (30) days of the transfer. The written agreement shall contain the name, address and taxpayer identification number or social security number of the parties to the transfer, the amount of the credit being transferred, the year the credit was originally allowed to the transferor, and the tax year or years for which the credit may be claimed. The Tax Commission may promulgate rules to permit verification of the validity and timeliness of the tax credit claimed upon a tax return pursuant to this subsection but shall not promulgate

any rules that unduly restrict or hinder the transfers of such tax credit. The tax credit allowed by this section, upon the election of the taxpayer, may be claimed as a payment of tax, a prepayment of tax or a payment of estimated tax for purposes of Section 1803 or Section 2355 of Title 68 of the Oklahoma Statutes.

F. Only tax credits allowed for nontaxable entities as authorized by subsection D of this section shall be transferable. Tax credits allowed for individual taxpayers pursuant to subsection A of this section shall not be transferable.

SECTION 6. This act shall become effective November 1, 2001.

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