

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

HOUSE JOINT
RESOLUTION HJR1061

By: Leist of the House

and

Price of the Senate

AS INTRODUCED

A Joint Resolution relating to emergency rules of the Oklahoma Water Resources Board; disapproving emergency rule relating to effective date for implementation of policy for total phosphorous criterion; setting certain effective date upon certain conditions; requiring the Oklahoma Water Resources Board to coordinate with certain governmental entities, agriculture, poultry and farm groups and associations to prepare implementation plans; requiring certain report; prohibiting total phosphorus criterion from being used as a basis for litigation by the state relating to water quality or pollution to scenic rivers until certain plans are prepared and presented; directing distribution; and declaring an emergency.

WHEREAS, the Oklahoma Water Resources Board adopted permanent rules OAC 785:45-5-19 and OAC 785:45-5-25 to add a total phosphorus criterion of 0.037 milligrams per liter to protect water quality of scenic rivers; and

WHEREAS, the House of Representatives acknowledges and affirms that those rivers designated by Oklahoma law as scenic rivers are unique and should have additional water quality protections; and

WHEREAS, there has been a substantial human population increase and agriculture development in the State of Oklahoma and the State of Arkansas in the watershed of the Illinois River. Such increase and development has resulted in an increase of total phosphorus and of algae growth in the Illinois River and Flint Creek, which are detrimental impacts to the water quality of the Illinois River and Flint Creek; and

WHEREAS, water flowing down the Illinois River and Flint Creek is impounded in Tenkiller Reservoir, and improvements of the water

quality in the Illinois River and Flint Creek by reducing the total phosphorus concentration in those scenic rivers are anticipated to improve the water quality of Tenkiller Lake in Oklahoma; and

WHEREAS, state environmental agencies are responsible for promulgating Water Quality Standards Implementation Plans to implement the water quality standards; and

WHEREAS, Water Quality Standards Implementation Plans need to be developed by state environmental agencies to identify actions and activities that may be necessary or required in implementing the total phosphorus criterion; and

WHEREAS, as part of Oklahoma's Water Quality Standards, the total phosphorus criterion will become applicable to the State of Arkansas and its citizens if approved by the United States Environmental Protection Agency; and

WHEREAS, the United States Environmental Protection Agency, in its Ambient Water Quality Criteria Recommendations for Rivers and Streams in Nutrient Ecoregion XI, recommends that by December 2004, states establish the total phosphorus criterion for the Central and Eastern Forested Uplands, which encompasses areas of Oklahoma's six designated scenic rivers; and

WHEREAS, the Environmental Protection Agency may promulgate total phosphorus criterion unless a state establishes its own criterion based on more site specific information; and

WHEREAS, the Oklahoma Water Resources Board should coordinate with the United States Environmental Protection Agency and State of Arkansas agencies and entities in preparing plans to implement the total phosphorus criterion and in seeking funding to assist in efforts to reduce the total phosphorus contribution to the Illinois River and Flint Creek; and

WHEREAS, the Administrative Procedures Act requires an agency promulgating a rule to provide increased direct and indirect costs caused by implementation of the rule; and

WHEREAS, as the Oklahoma Water Resources Board has failed to sufficiently determine costs to public and private entities which must implement and comply with the total phosphorous criterion; and

WHEREAS, public and private entities should not be required to implement and comply with total phosphorus criterion, until state environmental agencies promulgate Water Quality Implementation Plans to address the total phosphorus criterion for scenic rivers and an adequate financial impact of the direct and indirect costs to public and private entities is completed for implementation and compliance rules to reduce total phosphorous.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES AND THE SENATE OF THE 2ND SESSION OF THE 48TH OKLAHOMA LEGISLATURE:

SECTION 1. The emergency rule adopted by the Oklahoma Water Resources Board on April 9, 2002, relating to OAC 785:45-5-28, which provides for the implementation policy for total phosphorous criterion established by OAC 785:45-5-19 and 785:45-5-25, is hereby disapproved.

SECTION 2. If Water Quality Standards Implementation Plans have been developed regarding the implementation of total phosphorous criterion by the state environmental agencies responsible for implementing such plans, the Oklahoma Water Resources Board shall promulgate permanent rules, to be effective no earlier than July 15, 2003, which will set an effective date for enforceability of the numerical criterion for phosphorus in the scenic rivers pursuant to promulgated permanent rules.

SECTION 3. In order to establish an effective date for the enforceability of a numeric total phosphorous criterion for scenic rivers, the Oklahoma Water Resources Board shall:

1. Coordinate with state environmental agencies, agriculture, poultry and farm groups and associations, and State of Arkansas agencies and entities in preparing the implementation schedule; and

2. Prepare and submit a report to the Oklahoma Legislature by April 1, 2003, which:

- a. details the progress of the implementation plans by state environmental agencies responsible for implementing such plans,
- b. after reviewing the total phosphorus criterion and implementation schedule, makes a determination that the criterion and schedule is appropriate and achievable to protect scenic rivers, and
- c. makes recommendations for any appropriate modifications, if data and information indicate the need to make such modifications.

SECTION 4. Total phosphorus criterion shall not be used as the sole basis for litigations by the State of Oklahoma or any of its agencies relating to water quality or pollution to scenic rivers until study results as to economic impacts of implementation of the total phosphorus criterion are presented to the Governor and to the Legislature.

SECTION 5. Copies of this joint resolution shall be distributed to the Governor of the State of Oklahoma, the Attorney General of Oklahoma, the Oklahoma Water Resources Board, the Oklahoma Department of Environmental Quality, the State Department of Agriculture, the Oklahoma Scenic Rivers Commission, the Oklahoma Conservation Commission, and the Governor of the State of Arkansas.

SECTION 6. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this resolution shall take effect and be in full force from and after its passage and approval.

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