

ENROLLED SENATE
BILL NO. 609

By: Sweeden of the Senate

and

Piatt, Adkins and Hyman of
the House

An Act relating to fuels; amending 17 O.S. 2001, Section 251, which relates to fuel adjustment clauses; modifying certain accounting method relating to gas in storage; creating the Oklahoma Bioenergy Center Act; providing short title; creating the Oklahoma Bioenergy Center within the Oklahoma Department of Commerce; stating purpose; providing for administration by the Oklahoma Bioenergy Center Board; stating membership; providing for promulgation of rules; authorizing Board to distribute funds for certain activities and employ certain staff; requiring Board to prepare certain report; exempting Board activities from the Oklahoma Central Purchasing Act; limiting personal liability for Board members; authorizing Board to appoint executive director; stating duties; stating legislative intent; directing certain funding; authorizing Center to accept donations or gifts; stating Board responsibility for distribution of funds; stating purpose; authorizing assistance from certain agencies; creating revolving fund; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 17 O.S. 2001, Section 251, is amended to read as follows:

Section 251. A. No fuel adjustment clause of any kind shall hereafter be authorized by the Corporation 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 weighted average cost method of inventory accounting; and

6. No estimated fuel adjustment shall be allowed.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5009.11 of Title 74, unless there is created a duplication in numbering, reads as follows:

Sections 3 through 7 of this act shall be known and may be cited as the "Oklahoma Bioenergy Center Act".

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5009.12 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created within the Oklahoma Department of Commerce, the Oklahoma Bioenergy Center to serve as a strategic partnership that will focus the collective resources of contributing institutions in the field of bioenergy research to:

1. Strategically coordinate resources and research programs in Oklahoma to address and undertake complex research facing the biofuels and bioenergy industry in Oklahoma and in the nation;

2. Assist Oklahoma in being a recognized leader in the fields of research and production of biofuels, bioenergy and related biobased products;

3. Advance the research capacity in Oklahoma in the fields of biofuels and bioenergy development and production along the biofuel, bioenergy and biobased product production/value chain, from field to conversion to utilization;

4. Serve as a focal point and resource for the emerging agriculture-based biofuels and bioenergy industry in Oklahoma; and

5. Conduct research through its contributing institutions and partnerships to deliver practical outcomes to:

- a. enable the competitive and sustainable production of liquid biofuels, including ethanol, in Oklahoma, and
- b. contribute to the national research effort to enable the United States to achieve prescribed levels of petroleum independence.

B. The Department of Commerce shall assist the Center in fulfilling the responsibilities of this act, as requested by the Center.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5009.13 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Bioenergy Center shall be administered and governed by the Oklahoma Bioenergy Center Board, made up of representatives of the contributing institutions of the Center which initially shall be the University of Oklahoma, Oklahoma State University and the Samuel Roberts Noble Foundation, Inc. Additional contributing institutions may be added at the discretion of the Board, as such institutions contribute to the purpose, objectives and research coordinated by the Center. Additional contributing institutions may include institutions of higher education, nonprofit research institutions and private enterprise.

B. The Board shall initially consist of seven (7) members as follows:

1. One member, who shall serve as the Chair of the Board, shall be appointed by the Governor;

2. One member shall be the Vice President of Research from the University of Oklahoma;

3. One member shall be appointed by the President of the University of Oklahoma;

4. One member shall be the Vice President of Research from Oklahoma State University;

5. One member shall be appointed by the President of Oklahoma State University; and

6. Two members shall be appointed by the President of the Samuel Roberts Noble Foundation.

C. At the discretion of the Board, additional members may be added to the Board, who shall represent additional contributing institutions of the Center which have been added as provided for in subsection A of this section.

D. Board members shall be appointed within thirty (30) days following the effective date of this act.

E. Board members shall serve at the pleasure of their respective appointing authorities.

F. The Board shall be responsible for establishing procedures for the Center and operations of the Board. The procedures and operations shall be established as rules promulgated by the Board pursuant to the requirements of the Administrative Procedures Act. The rules may provide for protection from public disclosure of trade secrets and proprietary information of any kind, including, but not limited to, data, processes and technology, as the Board determines necessary.

G. The Board shall undertake activities and commission programs, through the contributing institutions, to achieve the purpose and satisfy the objectives of the Center as set forth in this act. The Board shall have authority to distribute funding for such activities and programs. The Board may commission and hire technical advisors, including legal counsel, to advise the Board regarding the technical aspects of the research conducted in furtherance of the Center. The Board may employ staff as it deems necessary.

H. The Board shall prepare an annual, written report to summarize the annual progress of the Center, including summaries of its programs and their progress and outcomes. The report shall be made available to the public and shall be distributed to the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives.

I. The provisions of the Oklahoma Central Purchasing Act shall not apply to any project, activity or contract of the Center or the Board.

J. No board member or any person acting on behalf of the Board or Center executing any contracts, commitments or agreements issued pursuant to the Oklahoma Bioenergy Center Act shall be personally liable for the contracts, commitments, or agreements or be subject to any personal liability or accountability by reason thereof. No director or any person acting on behalf of the Board or Center shall

be personally liable for damage or injury resulting from the performance of duties hereunder.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5009.14 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Bioenergy Center Board shall appoint an executive director of the Center. The Board shall establish criteria for selecting the executive director, taking into consideration national standards. The search for the executive director shall be conducted pursuant to the criteria established by the Board.

B. The executive director of the Center shall serve at the pleasure of the Board.

C. The executive director of the Center shall serve as the chief executive officer of the Center. The executive director shall direct and supervise the administrative affairs and the general management of the Center. The executive director is authorized to employ staff and legal counsel as necessary and expend funds as necessary for administrative purposes as approved by the Board.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5009.15 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. It is hereby stated to be the intent of the Legislature to provide funding for the Oklahoma Bioenergy Center.

B. State appropriations for the Center shall be made as otherwise provided by law and shall be directed to the Oklahoma Department of Commerce, which shall not exercise any discretion with respect to the expenditure of such funds but shall directly allocate the appropriations to the Center.

C. The Center is authorized to accept donations, grants or endowments from any person, corporation or entity to implement the provisions of the Oklahoma Bioenergy Center Act.

D. The Oklahoma Bioenergy Center Board shall be solely responsible for overseeing and effecting the distribution of funds in furtherance of the purpose of the Center. No funding designated for the Center shall be used for:

1. The construction or purchase of any facility; or
2. Faculty or research endowments.

E. The Center may receive assistance from any other state agency or public entity to implement the provisions of the act, including, but not limited to, administrative assistance, staffing or legal counsel and provision of office space or equipment as necessary. Assistance agreements may be made by memorandums of understanding or as otherwise provided by law.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5009.16 of Title 74, unless there is created a duplication in numbering, reads as follows:

There is hereby created in the State Treasury a revolving fund for the Oklahoma Bioenergy Center to be designated the "Oklahoma Bioenergy Center Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies received by the Oklahoma Department of Commerce or any other entity authorized to accept or expend funds on behalf of the Oklahoma Bioenergy Center from any authorized source. All monies accruing to the credit of the fund are hereby appropriated and may be budgeted and expended by the Oklahoma Bioenergy Center for the purpose of implementing the provisions of the Oklahoma Bioenergy Center Act. Expenditures from the 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.

SECTION 8. Section 1 of this act shall become effective January 1, 2008.

SECTION 9. 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.

Passed the Senate the 24th day of May, 2007.

Presiding Officer of the Senate

Passed the House of Representatives the 24th day of May, 2007.

Presiding Officer of the House
of Representatives