

THE HOUSE OF REPRESENTATIVES
Monday, April 16, 2007

Committee Substitute for
ENGROSSED
Senate Bill No. 517

COMMITTEE SUBSTITUTE FOR ENGROSSED SENATE BILL NO. 517 - By: WILSON
of the Senate and MCNIEL of the House.

(agriculture – Oklahoma Forestry Code – forest fires - lawful burns –
codification –
effective date)

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

1 SECTION 1. AMENDATORY 2 O.S. 2001, Section 16-2, is amended to read as
2 follows:

3 Section 16-2. As used in the Oklahoma Forestry Code:

4 1. “Director” means the Director of Forestry of the ~~State~~ Oklahoma Department of
5 Agriculture, Food, and Forestry;

6 2. “Division” means the Forestry Division of the ~~State~~ Oklahoma Department of
7 Agriculture, Food, and Forestry;

8 3. “Established property line” means any boundary line which has been:

- 9 a. recognized by adjoining land owners as a boundary and uncontested
10 for at least fifteen (15) years including, but not limited to, fence lines,
11 roads, and natural features,

1 b. established by a registered land surveyor, or

2 c. uncontested for at least fifteen (15) years;

3 4. “Forest rangers” means all employees of the Forestry Division who have
4 responsibilities in forest protection, including laborers, mechanics, and other employees
5 who assist in forest protection;

6 5. “Forest” means a tract of land that is at least ten percent (10%) stocked by trees
7 of any size, whether of commercial or noncommercial species, or formerly having tree
8 cover and not currently developed for nonforest use, including woodlands, woodlots,
9 windbreaks, and shelterbelts;

10 6. “Lawful burning” means the controlled application by the owner of croplands,
11 rangelands, grasslands, forestlands, or other wild lands of fire to naturally occurring
12 vegetative fuel in compliance with Section 16-24.1 of this title and Section 7 of this act;

13 7. “Logging or timber harvesting operations” means the cutting or harvesting of
14 and removal of timber from a site, leaving the root mass intact;

15 7. 8. “Owner” means the possessor of a fee interest, a tenant, lessee, occupant, or
16 other person in lawful control of land;

17 8. 9. “Prescribed burning” means the controlled application by the owner of
18 croplands, rangelands, or forestlands of fire to naturally occurring vegetative fuel under
19 specified environmental conditions and following appropriate precautionary measures,
20 which causes the fire to be confined to a predetermined area and accomplish land
21 management objectives. ~~Any person conducting a prescribed burn shall comply with the~~
22 ~~provisions of Section 16-28.2 of this title;~~

1 ~~9.~~ 10. “Timber” means live and dead trees and the profit in any live and dead trees
2 including, but not limited to, bark, foliage, wood, vines, firewood, crossties, and
3 shrubbery;

4 ~~10.~~ 11. “Timber owner” means any person who owns the right to cut or harvest
5 timber at the time the timber is to be cut or harvested, or who legally owns the severed
6 timber;

7 ~~11.~~ 12. “Wildfires” means any fire which is not controlled on forests, grasslands,
8 ~~unimproved~~ fields, or croplands; and

9 ~~12.~~ 13. “Wild lands” means any ~~unimproved~~ undeveloped lands regardless of kind
10 of vegetative plant cover including forests, prairies, marshes, and swamps.

11 SECTION 2. AMENDATORY 2 O.S. 2001, Section 16-4, as amended by Section
12 1, Chapter 209, O.S.L. 2006 (2 O.S. Supp. 2006, Section 16-4), is amended to read as
13 follows:

14 Section 16-4. It shall be the duty of the State Board of Agriculture under terms the
15 Board determines shall best serve the public interest to assist and cooperate with federal
16 and state departments, educational institutions, counties, towns, corporations, or
17 individuals; to gather and disseminate information about forests, their care and
18 management; to prevent and extinguish ~~forest fires~~ wildfires; to enforce all laws
19 pertaining to forests and woodlands; and to monitor the health, inventory, and condition
20 of the state’s forest resources.

21 SECTION 3. AMENDATORY 2 O.S. 2001, Section 16-8, is amended to read as
22 follows:

1 Section 16-8. A. The Forestry Division, in connection with the enforcement of the
2 Oklahoma Forestry Code, shall have the following powers, authority, and duties:

3 1. To enforce the provisions of this code and other forest and forest protection laws
4 of this state;

5 2. To prevent, detect, extinguish, and investigate ~~forest fires~~ wildfires in this state;

6 3. To provide ~~forest fire~~ wildfire fighting crews, who shall be under the control and
7 direction of forest rangers and other designated agents of the Division ~~in specified~~
8 ~~protection areas~~;

9 4. To appoint district foresters, assistant district foresters, investigators, rangers,
10 and other employees;

11 5. To use the resources of the Division on state-owned parks and other state-
12 administered lands to prevent and suppress fires and to establish fire fighting crews who
13 shall be authorized to suppress fires on state lands;

14 6. To be reimbursed on an actual cost basis for all services provided to state parks
15 and other lands administered by the State of Oklahoma;

16 7. To investigate cases of forest timber theft;

17 8. To make available for sale surplus state vehicles directly to rural fire
18 departments or municipal fire departments, in cities or towns under ten thousand
19 (10,000) population. State vehicles may be offered for sale only after approval is given in
20 writing by the Department of Central Services and an evaluation is made of each vehicle
21 and a price set by the Department of Central Services. The Forestry Division may only

1 receive the amount authorized by the Department of Central Services for the sale of the
2 vehicle; and

3 9. To purchase equipment from the Rural Fire Defense Equipment Revolving
4 Fund's inventory, when advantageous to the state, and to reimburse the Revolving Fund.

5 B. Forest rangers, and the fire fighting crews under their control and direction,
6 may enter upon any lands for the purpose of preventing and suppressing ~~forest fires~~
7 wildfires and to enforce the provisions of the Oklahoma Forestry Code and other ~~forest~~
8 ~~fire~~ wildfire and forest protection laws of this state.

9 C. Forest rangers, employees of the Division, and all persons under contract or
10 agreement with the Division to assist in fire fighting operations, as well as persons called
11 upon by forest rangers or other authorized employees of the Division to assist in fire
12 fighting under the direction or supervision of employees of the Division, may, in the
13 performance of their duties, set backfires, dig trenches, cut firelines, and carry on all
14 customary activities in the fighting of ~~forest fires~~ wildfires without incurring liability to
15 any person.

16 D. 1. The Director may appoint, subject to the approval of the Board, special
17 officers who shall have the power and authority to arrest. The special officers shall have
18 power and authority throughout the state, under the direction and control of the
19 Division, to enforce the criminal provisions contained in the Oklahoma Forestry Code,
20 ~~and in~~ other laws relating to forests and ~~forest fires~~ wildfires, and the Oklahoma
21 Agricultural Code.

1 2. The special officers shall have power and authority to make arrests with or
2 without warrants for violations of the criminal provisions of the Oklahoma Forestry
3 Code, ~~and of other laws relating to forests and forest fires~~ wildfires, and the Oklahoma
4 Agricultural Code to the same extent and under the same limitations and duties as peace
5 officers under the provisions of Title 22, Chapter 3 of the Oklahoma Statutes.

6 3. In connection with the enforcement of the criminal provisions, the special officers
7 and other state investigators or law enforcement officers may go upon all premises when
8 necessary for the enforcement of laws. All special officers shall be ex officio forest
9 rangers and shall be under the control and direction of the Division; except, the Director
10 may at any time, for cause, remove any powers and authority of arrest conferred. Special
11 officers shall have the same right and authority to carry arms as the sheriffs of this state.
12 The compensation of special officers shall be fixed and paid by the Division from its
13 funds.

14 SECTION 4. AMENDATORY 2 O.S. 2001, Section 16-24.1, as amended by
15 Section 1, Chapter 268, O.S.L. 2006 (2 O.S. Supp. 2006, Section 16-24.1), is amended to
16 read as follows:

17 Section 16-24.1 A. It shall be lawful for an owner of croplands, rangelands,
18 grasslands, ~~or~~ forestlands, or other wild lands to set the croplands, rangelands,
19 grasslands, ~~or~~ forestlands, or other wild lands on fire for the purposes of:

20 1. Managing and manipulating plant species present whether grass, weeds, brush,
21 or trees; and

1 2. Destroying detrimental or unwanted plants, plant parts, shrubs or trees on the
2 croplands, rangelands, grasslands, ~~or~~ forestlands, or other wild lands; and

3 3. Cedar tree eradication.

4 B. The provisions of this section shall not be construed to exempt or release a
5 person from civil liability for damages or injury incurred as a result of the burn or for
6 criminal liability as imposed pursuant to the Oklahoma Forestry Code.

7 SECTION 5. AMENDATORY 2 O.S. 2001, Section 16-25, is amended to read as
8 follows:

9 Section 16-25. A. It is unlawful for any person to carelessly or willfully burn or
10 cause to be burned or to set fire to or cause any fire to be set to any forest, grass, crops,
11 rangeland, or ~~woodlands~~ other wild lands not owned by, duly authorized by the owner or
12 manager, or in the lawful possession of, the person setting the fire or burning the lands
13 or causing the fire to be burned.

14 B. Any person who carelessly violates this section is guilty of a misdemeanor
15 punishable by a fine of not more than Five Hundred Dollars (\$500.00), by imprisonment
16 for not more than one (1) year, or both. Any person who willfully violates this section is
17 guilty of a felony punishable by a fine of not more than ~~One Thousand Dollars (\$1,000.00)~~
18 Five Thousand Dollars (\$5,000.00), by imprisonment for not more than three (3) years, or
19 by both.

20 C. Any person who carelessly or willfully burns, causes to be burned, sets fire, or
21 causes fire to be set, any forest, grass, croplands, or woodlands not owned by, duly

1 authorized by the owner or manager, or in lawful possession of, shall be liable in a civil
2 action to any person injured or damaged by a fire to the amount of the injury or damages.

3 SECTION 6. AMENDATORY 2 O.S. 2001, Section 16-26, as amended by
4 Section 2, Chapter 209, O.S.L. 2006 (2 O.S. Supp. 2006, Section 16-26), is amended to
5 read as follows:

6 Section 16-26. A. It is unlawful for any person to set fire to any forest, grass, ~~woods~~
7 range, crop, or other wild lands ~~or marshes~~, or to build a campfire or bonfire, or to burn
8 trash or other material that may cause a forest, grass, range, crop or ~~woods~~ other wild
9 lands fire in any county, counties or area within a county where, because of emergency
10 drought conditions, there is gubernatorially proclaimed extraordinary danger from fire,
11 unless the setting of any backfire during the drought emergency is necessary to afford
12 protection as determined by a representative of the Division of Forestry, or unless it can
13 be established that the setting of the backfire was necessary for the purpose of saving life
14 or property. The burden of proving the necessity shall rest on the person claiming a
15 defense.

16 B. The Division of Forestry shall advise the Governor when the lands described in
17 subsection A of this section in any county, counties or area within a county of this state
18 because of emergency drought conditions are in extraordinary danger from fire. The
19 Governor may by proclamation declare a drought emergency to exist and describe the
20 general boundaries of the area affected.

21 C. Any proclamation promulgated by the Governor under authority of this section
22 shall be effective immediately upon the Governor's signed approval of the emergency

1 proclamation. Notice of the proclamation shall occur through posting on the Oklahoma
2 Department of Agriculture, Food, and Forestry's web site and informing local news
3 media. Evidence of publication or posting as herein provided shall be maintained by the
4 Forestry Division.

5 D. When conditions warrant, due notice of the termination of the emergency shall
6 be promptly made by proclamation, which shall be published or posted in like manner as
7 when officially declared.

8 E. Any person who violates this section is guilty of a misdemeanor punishable by a
9 fine of not more than Five Hundred Dollars (\$500.00), by imprisonment for not more
10 than one (1) year, or both.

11 SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma
12 Statutes as Section 16-28.1 of Title 2, unless there is created a duplication in numbering,
13 reads as follows:

14 A. The provisions of this section shall apply to a lawful burn.

15 B. It is unlawful for any person either willfully or carelessly to burn, cause to be
16 burned, to set fire to, or cause fire to be set to any forest, grass, croplands, rangeland, or
17 other wild lands, by an owner of such property, except under the following circumstances:

18 1. In protection areas, notification to burn shall be made by the owner to the local
19 office or local representative of the Forestry Division at least four (4) hours in advance
20 and verbal or written approval obtained. In addition to the notification requirements of
21 this paragraph, any owner conducting a prescribed burn in a protected area shall comply
22 with the provisions of Section 16-28.2 of Title 2 of the Oklahoma Statutes; or

1 2. Outside protection areas, in order for prescribed or controlled burning to be
2 lawful, an owner shall take reasonable precaution against the spreading of fire to other
3 lands by providing adequate fire lines, manpower, and fire fighting equipment for the
4 control of the fire, shall watch over the fire until it is extinguished and shall not permit
5 fire to escape to adjoining land.

6 C. Nothing in this section shall relieve the person from the obligation to confine the
7 fire to the owner's, agent's, or tenant's land.

8 D. The Oklahoma Forestry Code shall not apply to trimming or cutting of trees by
9 public or private utilities for the purpose of eliminating interference with utility lines,
10 poles, or other utility equipment.

11 E. 1. Except as otherwise provided by Section 16-28.2 of Title 2 of the Oklahoma
12 Statutes, any person:

- 13 a. who, whether by accident, neglect or intent, causes or allows damage
14 or injury to occur to any ranch, buildings, improvements, hay, grass,
15 crops, fencings, timber, marsh, or other property of another person by
16 any fire described and conducted pursuant to this section, shall be
17 civilly responsible for such damage or injury so caused pursuant to
18 Section 16-30 of Title 2 of the Oklahoma Statutes, and
19 b. who carelessly violates this section is guilty of a misdemeanor
20 punishable by a fine of not more than Five Hundred Dollars (\$500.00),
21 by imprisonment for not more than one (1) year, or both.

1 2. In addition to civil liability, any person who willfully violates this section is
2 guilty of a felony punishable by a fine of not more than One Thousand Dollars
3 (\$1,000.00), by imprisonment for not more than three (3) years, or by both.

4 F. Fire set under the provisions of this section shall not be allowed to spread
5 beyond the control of the person setting the fire and shall be subdued and extinguished.

6 SECTION 8. AMENDATORY 2 O.S. 2001, Section 16-28.2, as amended by
7 Section 2, Chapter 410, O.S.L. 2003 (2 O.S. Supp. 2006, Section 16-28.2), is amended to
8 read as follows:

9 Section 16-28.2 A. 1. The provisions of this section apply to a prescribed burn.

10 2. Any owner wishing to set fire to land in order to conduct a prescribed burn shall
11 comply with the provisions of this section.

12 B. 1. Within sixty (60) days prior to conducting a prescribed burn, the owner of
13 land to be burned shall orally or in writing notify all landowners whose lands adjoin the
14 owner's land to be burned.

15 2. If any landowner is burning on a large, consolidated tract of land in which there
16 are multiple adjacent owners, only those owners with adjoining land within one (1) mile
17 of the proposed burn area must be notified.

18 3. The owner shall include in the written notice or shall orally notify the adjoining
19 landowners of the proposed date and location of the burn and a telephone number where
20 the owner can be reached for information regarding the prescribed burn.

21 C. In addition to notification of adjoining property owners pursuant to subsection B
22 of this section, the owner of the land to be burned shall complete the prescribed burn

1 notification plan specified in subsection D of this section and shall submit such plan to
2 the rural fire department nearest the land to be burned. If the land to be burned is in a
3 protection area, the owner shall also submit a copy of the notification plan to the local
4 office or local representative of the Forestry Division nearest to the land to be burned.

5 D. Any person wishing to conduct a prescribed burn shall complete this form,
6 distributed by the Oklahoma Department of Agriculture, Food, and Forestry, which shall
7 be in substantially the following form:

8 PRESCRIBED BURN NOTIFICATION PLAN

9 Name _____ Phone _____
10 Address _____ County _____
11 City, State, Zip _____
12 Ranch name, if any _____
13 Area to be burned _____
14 Approximate acres to be burned _____
15 Written distance description of location _____
16 _____
17 Projected time frame _____
18 Date of previous burn _____
19 Objectives to be accomplished through the prescribed burn:
20 _____
21 _____
22 _____

1 E. 1. Whether the land is located within or outside a protection area, the owner of
2 land to be burned shall, within forty-eight (48) hours of conducting a prescribed burn,
3 notify the rural fire department receiving a copy of the prescribed burn notification plan
4 that the prescribed burn will be conducted.

5 2. Within a protection area, the owner of land to be burned shall also, within the
6 time period required by Section ~~16-28~~ 7 of this ~~title~~ act, notify the local office or local
7 representative of the Forestry Division receiving a copy of the prescribed burn
8 notification plan.

9 F. A prescribed burn conducted pursuant to provisions of this section shall:

10 1. Be considered in the public interest and shall not constitute a public or private
11 nuisance; and

12 2. Be considered a property right of the property owner if vegetative fuels are used.

13 G. 1. Any owner conducting a prescribed burn who is found by a court of law to
14 have caused damages or injury as a result of accident or by ordinary negligence shall
15 only be civilly liable for actual damages resulting from the prescribed burn.

16 2. Any owner conducting a prescribed burn who is found by a court of law to have
17 committed gross negligence in conducting the prescribed burn may be found to be both
18 civilly liable for the amount of damage done by the fire, and criminally liable pursuant to
19 paragraph 3 of this subsection.

20 3. Any owner setting or causing to be set on fire land as authorized by this section,
21 and as a result of gross negligence permitting the fire to spread beyond the control of the
22 owner or beyond the bounds of the owner's land, shall be deemed guilty of a

1 misdemeanor, and upon conviction thereof, be fined a sum not more than Five Hundred
2 Dollars (\$500.00), or imprisonment in the county jail for a period not more than six (6)
3 months.

4 SECTION 9. REPEALER 2 O.S. 2001, Section 1301-208, as amended by
5 Section 4, Chapter 208, O.S.L. 2001 and 2 O.S. 2001, Section 16-28 are hereby repealed.

6 SECTION 10. This act shall become effective November 1, 2007.

7 COMMITTEE REPORT BY: COMMITTEE ON NATURAL RESOURCES, dated 04-12-
8 07 - DO PASS, As Amended