

THE STATE SENATE
Monday, April 7, 2008

Committee Substitute for
ENGROSSED

House Bill No. 2238

COMMITTEE SUBSTITUTE FOR ENGROSSED HOUSE BILL NO. 2238 - By:
Schwartz of the House and Johnson (Mike) of the Senate.

An Act relating to waters and water rights; amending 82 O.S. 2001, Section 105.10, which relates to stream water use; prohibiting changes to identity of an applicant without approval; providing an exception; modifying date for pending applications; modifying review process of pending applications; amending 82 O.S. 2001, Section 874, as last amended by Section 1, Chapter 163, O.S.L. 2007 (82 O.S. Supp. 2007, Section 874), which relates to property of the Grand River Dam Authority; authorizing the district to sell certain electric generating property to certain interest owners; providing exemption from certain statutes; and declaring an emergency.

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

SECTION 1. AMENDATORY 82 O.S. 2001, Section 105.10, is amended to read as follows:

Section 105.10 A. 1. The date of receipt of an application for use of stream water in the office of the Oklahoma Water Resources Board shall be endorsed and shall be noted in the records of the Board.

2. If the application is defective as to form or unsatisfactory as to feasibility or safety of the plan, or as to the showing of the ability of the applicant to carry the construction to completion,

1 the Board shall advise the applicant of the correction, amendments
2 or changes required. The applicant shall have not more than sixty
3 (60) days from the date the Board so advises to refile ~~such~~ the
4 application. If refiled, corrected as required, within the
5 specified time limit, the application shall, upon being accepted by
6 the Board, take priority as of date of its original filing, subject
7 to compliance with the further provisions of the law and the rules
8 promulgated thereto. Any corrected application filed after the time
9 allowed shall be treated in all respects as an original application
10 received on the date of its refiling.

11 3. The plans of construction may be amended, with the approval
12 of the Board, at any time, provided that no change shall authorize
13 an extension of time for construction or placing the water to
14 beneficial use beyond that authorized in the permit, except as
15 provided in Section 105.15 of this title. A change in the proposed
16 point of diversion of water from a stream shall be subject to the
17 approval of the Board and shall not be allowed to the detriment of
18 the rights of others having valid claims to the use of water from
19 the stream.

20 4. Other than to reflect a corporate name change, no amendment
21 shall be made to the identity of the applicant without the express,
22 written approval of the Board.

1 B. 1. For applications that have been pending for more than
2 three (3) years prior to ~~the effective date of this section~~ June 5,
3 2000, the Board shall provide written notice to the applicant at the
4 ~~applicant's~~ last-known address of the applicant that the application
5 shall be deemed withdrawn and the priority date based on the
6 original filing date shall be lost unless the applicant provides
7 notice of the application as instructed by the Board. The Board
8 shall provide an opportunity for a hearing if requested in order for
9 the applicant to show cause why:

- 10 a. notice should not be published, and
11 b. the application should not be deemed withdrawn and the
12 priority date lost.

13 2. Cause for not publishing notice may be shown by substantial
14 competent evidence that:

- 15 a. the applicant has been diligently pursuing plans for
16 the project for which the water is proposed to be
17 used,
18 b. construction of the project is still practical, and
19 c. the applicant is still able to complete the project.

20 3. If the Board receives no response to the notice or cause is
21 not shown, the application shall be deemed withdrawn and priority
22 date lost.

1 C. 1. After ~~the effective date of this section~~ June 5, 2000,
2 applications may remain pending for more than three (3) years and
3 retain the priority date based on the original filing date if the
4 applicant files a request to extend pending status of the
5 application before the end of the first three-year period and each
6 successive three-year period thereafter and as required by rules
7 promulgated by the Board.

8 2. If a request to extend pending status is not filed in time
9 and as required by Board rules, the application ~~will~~ may be deemed
10 withdrawn, unless the applicant can show good cause for the failure
11 to timely file the request.

12 SECTION 2. AMENDATORY 82 O.S. 2001, Section 874, as last
13 amended by Section 1, Chapter 163, O.S.L. 2007 (82 O.S. Supp. 2007,
14 Section 874), is amended to read as follows:

15 Section 874. A. Nothing in Sections 861 through 890 of this
16 title shall be construed as authorizing the district and it shall
17 not be authorized to mortgage or otherwise encumber any of its
18 property of any kind, real, personal or mixed, or any interest
19 therein, or to acquire any property or interest subject to a
20 mortgage or conditional sale, provided that this section shall not
21 be construed as preventing the pledging of the revenues of the
22 district as herein authorized.

1 B. Nothing in Sections 861 through 890 of this title shall be
2 construed as authorizing the sale, lease or other disposition of any
3 property or interest of the district by the district or any receiver
4 of any of its properties or through any court proceeding or
5 otherwise.

6 C. 1. The district may sell for cash, subject to competitive
7 bidding as provided by the Board of Directors of the Grand River Dam
8 Authority, any property or interest in an aggregate value not
9 exceeding the sum of Five Hundred Thousand Dollars (\$500,000.00) in
10 any one (1) year, except that the district may sell any or all
11 surplus property that the district may have acquired without regard
12 to the limitations herein, if the Board, by the affirmative vote of
13 five or more of the members, shall have determined that the same is
14 not necessary to the business of the district and shall have
15 approved the terms of any sale.

16 2. Notwithstanding any other provision of law, the district may
17 sell real and personal property used for an electrical substation,
18 transformer station, switch station, or similar purpose to a rural
19 electric cooperative corporation which has an ownership interest in
20 an electricity generating station in which the district also has an
21 ownership interest. Sales pursuant to this paragraph shall be
22 exempt from the requirements and limitations of paragraph 1 of this

1 subsection and from the requirements of Section 129.4 of Title 74 of
2 the Oklahoma Statutes.

3 ~~B.~~ D. The district may lease any of its lands if the Board, by
4 the affirmative vote of five or more of the members, shall have
5 determined that the same can be leased without injury to or without
6 interference with the operations of the project, and shall have
7 approved the terms of any lease. Except as otherwise provided, no
8 shorelands (lands lying between the low and high water marks) shall
9 be leased for a term longer than two (2) years and not more than
10 one-fourth (1/4) mile of the lake front shall be leased to any one
11 person, firm or corporation. The district may lease shorelands for
12 a term longer than two (2) years and more than one-fourth (1/4) mile
13 of lake front may be leased to any one person, firm, or corporation
14 without regard to the limitations herein, if the Board, by the
15 affirmative vote of a majority of the members, determines that the
16 lease is necessary or beneficial to the business of the district.
17 The district may lease shorelands to political subdivisions,
18 agencies of the State of Oklahoma, or tax-exempt public trusts, for
19 any public purpose, on such terms as are mutually satisfactory to
20 the parties, notwithstanding the limitations herein. No lease shall
21 deprive the owner of any land adjacent to the shorelands or lake
22 front, or abutting thereon, of ingress or egress to and from the
23 water of the lakes and shall not deprive the owner of any wharf,

1 dock or boat anchorage privileges that would belong to the owner if
2 the shorelands or lake front were not leased.

3 ~~C.~~ E. It is the intention of Sections 861 through 890 of this
4 title that, except by sale, lease or agreement as expressly
5 authorized in Sections 861 through 890 of this title, no property or
6 interest of the district shall ever come into the ownership or
7 control, directly or indirectly, of any person, firm or corporation
8 other than a public authority created under the laws of the State of
9 Oklahoma.

10 F. Nothing in this section shall be construed as preventing the
11 district from contracting with the United States or any agency
12 thereof for the temporary possession, control and use of properties
13 by the United States or any agency thereof for the safety and
14 defense of the United States in time of a national emergency or in
15 anticipation thereof.

16 ~~D.~~ G. All property of the district shall be at all times
17 exempted from forced sale, and nothing contained in Sections 861
18 through 890 of this title shall authorize the sale of any of the
19 property of the district under any judgment rendered in any suit,
20 and such sales are hereby prohibited and forbidden. The provisions
21 of this subsection shall not apply to any property constructed on a
22 lease or the interest in a lease of shoreland that has been entered
23 into by the district pursuant to subsection B of this section for a

1 term of longer than two (2) years, provided the provisions of the
2 lease authorizing the mortgage and forced sale of the property or
3 lease interest has been approved by an affirmative vote of a
4 majority of the members of the Board.

5 ~~E-~~ H. The provisions of this section shall not apply to any
6 sale agreement, lease agreement or other agreement entered into by
7 the district pursuant to paragraphs (f) or (g) of Section 862 of
8 this title, provided that the agreement is in compliance with any
9 applicable provision restricting the sale or leasing of property by
10 the district contained in any resolution of the district providing
11 for the issuance of revenue bonds.

12 SECTION 3. It being immediately necessary for the preservation
13 of the public peace, health and safety, an emergency is hereby
14 declared to exist, by reason whereof this act shall take effect and
15 be in full force from and after its passage and approval.

16 COMMITTEE REPORT BY: COMMITTEE ON ENERGY & ENVIRONMENT, dated 4-3-08
17 - DO PASS, As Amended.