

THE STATE SENATE
Monday, February 26, 2007

Committee Substitute for
Senate Bill No. 747

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 747 - By: BINGMAN of the Senate and ARMES and McNIEL of the House.

[waste tires - tire recycling fees - emergency]

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

SECTION 1. AMENDATORY 27A O.S. 2001, Section 2-11-403, as renumbered by Section 9, Chapter 230, O.S.L. 2005, and as last amended by Section 1, Chapter 295, O.S.L. 2006 (27A O.S. Supp. 2006, Section 2-11-401.2), is amended to read as follows:

Section 2-11-401.2 A. 1. Except as otherwise provided by this section, the following assessments shall be made for tires for use on motor vehicles.

a. At the time any tire:

(1) with a rim diameter of seventeen and one-half (17 1/2) inches rim diameter or less is sold by a tire dealer, there shall be assessed a waste tire recycling fee of One Dollar (\$1.00) per tire,

(2) with a rim diameter greater than seventeen and one-half (17 1/2) inches but less than or equal to nineteen and one-half (19 1/2) inches is sold

1 by a tire dealer, there shall be assessed a waste
2 tire recycling fee of Two Dollars and fifty cents
3 (\$2.50) per tire,

4 (3) with a rim diameter greater than ~~seventeen and~~
5 ~~one-half (17 1/2)~~ nineteen and one-half (19 1/2)
6 inches is sold by a tire dealer, there shall be
7 assessed a waste tire recycling fee of Three
8 Dollars and fifty cents (\$3.50) per tire, and

9 ~~(3)~~

10 (4) is sold by a tire dealer for use on a motorcycle,
11 motor-driven cycle or motorized bicycle, there
12 shall be assessed a waste tire recycling fee of
13 One Dollar (\$1.00) per tire.

14 b. At any time a motor vehicle with a tire rim diameter
15 of seventeen and one-half (17 1/2) inches or less is
16 first registered in this state, there shall be
17 assessed a waste tire recycling fee of One Dollar
18 (\$1.00) per tire.

19 c. At any time a motor vehicle with a tire rim diameter
20 of greater than seventeen and one-half (17 1/2)
21 inches but less than or equal to nineteen and one-
22 half (19 1/2) inches is first registered in this
23 state, there shall be assessed a waste tire recycling

1 fee of Two Dollars and fifty cents (\$2.50) per tire,
2 except as otherwise provided by subparagraph e of
3 this paragraph.

4 d. At any time a motor vehicle with a tire rim diameter
5 of greater than ~~seventeen and one-half (17 1/2)~~
6 nineteen and one-half (19 1/2) inches is first
7 registered in this state, there shall be assessed a
8 waste tire recycling fee of Three Dollars and fifty
9 cents (\$3.50) per tire, except as otherwise provided
10 by subparagraph ~~d~~ e of this paragraph.

11 ~~d.~~ e. At any time a motorcycle, motor-driven cycle or
12 motorized bicycle is first registered in this state,
13 there shall be assessed a waste tire recycling fee of
14 One Dollar (\$1.00) per tire.

15 2. Motor vehicles registered pursuant to Section 1120 of Title
16 47 of the Oklahoma Statutes shall be exempt from the provisions of
17 this subsection.

18 3. No fee shall be assessed by a tire dealer for used tires or
19 retreaded tires for which the tire dealer can document that the
20 recycling fee has been previously paid.

21 4. All-terrain vehicles and off-road motorcycles registered
22 pursuant to the provisions of Section 1132 of Title 47 of the

1 Oklahoma Statutes shall be exempt from the provisions of this
2 section.

3 B. 1. The tire dealer and motor license agent shall remit such
4 fee to the Oklahoma Tax Commission in the same manner as provided by
5 Section 1365 of Title 68 of the Oklahoma Statutes.

6 2. Except as otherwise provided by this section, the tire
7 dealer shall remit to the Tax Commission ninety-seven and three-
8 quarters percent (97.75%) of the fee due pursuant to this section at
9 the time of filing any report as required by the Tax Commission.

10 3. Motor license agents shall remit all but One Dollar (\$1.00)
11 of the fee assessed on each vehicle registered.

12 4. Failure to remit the fee at the time of filing the returns
13 shall cause the fee to become delinquent. If the fee becomes
14 delinquent the tire dealer or motor license agent forfeits any claim
15 to the discount authorized by this section and shall remit to the
16 Tax Commission one hundred percent (100%) of the amount of the fee
17 due plus any penalty due.

18 C. If the fee imposed or levied by subsection A of this
19 section, or any part of such amount, is not paid before the fee
20 becomes delinquent, there shall be collected on the total delinquent
21 fee interest at the rate of one and one-quarter percent (1 1/4%) per
22 month from the date of the delinquency until paid.

1 D. If any fee due under subsection A of this section, or any
2 part thereof, is not paid within fifteen (15) days after the fee
3 becomes delinquent, a penalty of ten percent (10%) on the total
4 amount of fee due and delinquent shall be added and paid.

5 E. All penalties or interest imposed by this section shall be
6 recoverable by the Tax Commission as a part of the fee imposed and
7 all penalties and interest shall be apportioned the same as the fee
8 on which the penalties or interest are collected.

9 SECTION 2. AMENDATORY 27A O.S. 2001, Section 2-11-405,
10 as amended by Section 3, Chapter 230, O.S.L. 2005, and as renumbered
11 by Section 11, Chapter 230, O.S.L. 2005 (27A O.S. Supp. 2006,
12 Section 2-11-401.4), is amended to read as follows:

13 Section 2-11-401.4 A. Compensation to waste tire facilities
14 and tire-derived fuel or TDF facilities pursuant to this section
15 shall be limited to facilities located in Oklahoma. Compensation
16 for waste tire activities pursuant to this section shall be limited
17 to waste tires from Oklahoma. To be eligible, applicants for
18 compensation shall be in compliance with the Oklahoma Waste Tire
19 Recycling Act.

20 B. The monies accruing annually to the Waste Tire Recycling
21 Indemnity Fund shall be allocated first to the following:

22 1. ~~Four and one half percent (4.5%)~~ Two percent (2%) to the
23 Oklahoma Tax Commission and ~~three and one half percent (3.5%)~~ six

1 percent (6%) to the Department of Environmental Quality for the
2 purpose of administering the requirements of the Oklahoma Waste Tire
3 Recycling Act;

4 2. An amount not to exceed Fifty Thousand Dollars (\$50,000.00)
5 per audit to the State Auditor and Inspector for the purpose of
6 conducting audits of the Oklahoma Waste Tire Recycling Program
7 pursuant to Section 2-11-401.6 of this title; and

8 3. Up to ten percent (10%) for capital investment reimbursement
9 to waste tire facilities and TDF facilities for the purchase of
10 equipment necessary to utilize waste tires. Only equipment
11 purchased on or after January 1, 1995, shall be eligible. The
12 facilities are eligible for compensation at a rate of Twenty Dollars
13 (\$20.00) per ton of waste tires used. Total reimbursement shall not
14 exceed one hundred percent (100%) of the capital investment in
15 eligible equipment. The facilities may apply for compensation
16 monthly to the Commission, and shall supply any information required
17 by the Commission.

18 C. After the allocations under subsection B of this section are
19 made, the balance of monies in the Fund shall be available for
20 compensation pursuant to the provisions of the Oklahoma Waste Tire
21 Recycling Act as follows:

22 1. Compensation to waste tire facilities for waste tire
23 processing, at the rate of Fifty-four Dollars (\$54.00) per ton of

1 processed tire material. For compensation the following conditions
2 shall apply:

3 a. facilities that process waste tires by altering the
4 form of the waste tires but do not produce crumb
5 rubber shall not receive compensation until the
6 facility documents the sale and movement of the
7 processed tire material off-site to a third party,

8 b. facilities shall report and certify tire processing
9 activity in terms of weight. The facility shall by
10 sworn affidavit provide to the Tax Commission
11 sufficient information to verify that the facility has
12 processed tires and sold processed tires for actual
13 recycling or reuse in accordance with the purposes of
14 the Oklahoma Waste Tire Recycling Act, and

15 c. to be eligible for compensation, a facility shall not
16 have accumulated more processed material than the
17 amount for which the facility has provided financial
18 assurance under its solid waste permit or the amount
19 accumulated from three (3) years of operation,
20 whichever is less;

21 2. a. Compensation to waste tire facilities or TDF
22 facilities at the rate of Fifty-three Dollars (\$53.00)
23 per ton of whole waste tires for the collection and

1 transportation of waste tires from Oklahoma tire
2 dealers, automotive dismantlers and parts recyclers,
3 solid waste landfill sites, and dumps certified by the
4 Department priority cleanup list, and delivering the
5 tires to a waste tire facility or TDF facility. The
6 collection and transportation of waste tires shall be
7 provided by the waste tire facility or TDF facility at
8 no additional cost to the tire dealer or automotive
9 dismantler and parts recycler or to the Fund. The
10 waste tire facility or TDF facility shall collect from
11 any location at which there are at least three hundred
12 waste tires.

13 b. Compensation under this paragraph shall not be payable
14 until the waste tires have been actually processed
15 according to the solid waste permit for the facility
16 or actually used for energy or fuel recovery. A TDF
17 facility that collects and transports whole waste
18 tires shall be eligible for compensation under this
19 paragraph only for those whole waste tires consumed by
20 that facility.

21 c. No tire dealer shall charge any customer any
22 additional fee for the management, recycling, or
23 disposal of any waste tire upon which the waste tire

1 recycling fee has been remitted to the Tax Commission.
2 For customers who choose not to leave a waste tire
3 upon which the waste tire recycling fee has been
4 remitted to the Tax Commission, the tire dealer shall
5 issue a receipt which entitles the customer to deliver
6 the waste tire to the dealer at a later date.

7 d. To be eligible for compensation pursuant to this
8 paragraph, the waste tire facility or TDF facility
9 shall:

10 (1) demonstrate to the satisfaction of the Department
11 that the facility is regularly engaged in the
12 collection, transportation and delivery of waste
13 tires to a waste tire facility or to a TDF
14 facility, on a statewide basis, and from each
15 county of the state,

16 (2) provide documentation to the Tax Commission,
17 signed by a dealer at the time of collection,
18 which certifies by sworn affidavit the total
19 amount of waste tire recycling fees, itemized by
20 month, remitted by the dealer since the date the
21 waste tires of the dealer were last collected,
22 and

1 (3) annually demonstrate that at least five percent
2 (5%) of the tires were collected from tire dumps
3 or landfills on the Department priority cleanup
4 list or community-wide cleanup events approved by
5 the Department.

6 e. In lieu of proof of remitted tire recycling fees, the
7 waste tire facility or TDF facility shall accept proof
8 of purchase of a salvage vehicle registered in
9 Oklahoma by an automotive dismantler and parts
10 recycler, licensed pursuant to the Automotive
11 Dismantlers and Parts Recycler Act, for the collection
12 and transportation of up to five waste tires per
13 salvage vehicle purchased on or after January 1, 1996;

14 3. a. Compensation to a person, corporation or other legal
15 entity who has obtained a permit or other
16 authorization from the United States Army Corps of
17 Engineers or a local Conservation District to provide
18 services for erosion control projects. Compensation
19 shall be at the rate of Two Dollars and eighty cents
20 (\$2.80) per tire for waste tires having a tire rim
21 diameter of greater than seventeen and one-half (17
22 1/2) inches, and eighty cents (\$0.80) per tire for

1 tires having a rim diameter less than or equal to
2 seventeen and one-half (17 1/2) inches.

3 b. Reimbursement under this paragraph shall be subject to
4 the following:

5 (1) the applicant for reimbursement collects or
6 provides for the collection and utilization of
7 waste tires in an erosion control project in
8 Oklahoma in accordance with a written plan
9 approved by the United States Army Corps of
10 Engineers or by a local Conservation District,

11 (2) the tires are collected and transported to the
12 site of the erosion control project,

13 (3) the site landowner agrees to plant trees or other
14 suitable vegetation in accordance with a planting
15 plan developed in conjunction with the Division
16 of Forestry of the ~~State~~ Oklahoma Department of
17 Agriculture, Food, and Forestry,

18 (4) the applicant reports and certifies the number of
19 tires utilized. The applicant shall by sworn
20 affidavit provide to the Tax Commission
21 sufficient information to verify that the
22 applicant has utilized the tires in accordance

1 with the purposes of the Oklahoma Waste Tire
2 Recycling Act,

3 (5) the applicant annually demonstrates that at least
4 five percent (5%) of the tires utilized by the
5 applicant for which compensation is requested
6 were collected from tire dumps or landfills on
7 the Department priority cleanup list or
8 community-wide cleanup events approved by the
9 Department,

10 (6) the applicant demonstrates to the satisfaction of
11 the Department that the applicant is regularly
12 engaged in the collection, transportation and
13 delivery to erosion control projects of waste
14 tires, on a statewide basis, and from each county
15 of the state, at no additional cost to the tire
16 dealer or automotive dismantler and parts
17 recycler or to the Fund, and

18 (7) the applicant provides documentation to the Tax
19 Commission, signed by a dealer at the time of
20 collection, which certifies by sworn affidavit
21 the total amount of waste tire recycling fees,
22 itemized by month, remitted by the dealer since

1 the date the waste tires of the dealer were last
2 collected.

3 c. In lieu of proof of remitted tire recycling fees, the
4 applicant shall accept proof of purchase of a salvage
5 vehicle registered in Oklahoma by an automotive
6 dismantler and parts recycler, licensed pursuant to
7 the Automotive Dismantlers and Parts Recycler Act, for
8 the collection and transportation of up to five waste
9 tires per salvage vehicle purchased on or after
10 January 1, 1996.

11 d. Compensation pursuant to this paragraph shall be
12 payable only for the tires collected and utilized in
13 accordance with the purposes of the Oklahoma Waste
14 Tire Recycling Act and as authorized by the
15 Department. During the course of the erosion control
16 project, the Department may determine the amount of
17 and authorize partial compensation, as tires are
18 utilized in accordance with the written plan.

19 e. Any entity deemed eligible for reimbursement under the
20 provisions of this paragraph shall be liable for the
21 erosion control project for a period of five (5)
22 years. During the five-year period, if additional
23 cleanup or remediation of an erosion control project

1 is required due to failure or negligence on the part
2 of the original contractor, the original contractor
3 shall be responsible for cleanup costs and shall not
4 be eligible for any additional compensation from the
5 Fund for costs related to that erosion control
6 project;

7 4. a. Compensation to a unit of local or county government
8 that submits to the Department for approval a plan for
9 the use of baled waste tires in an engineering
10 project. Compensation shall be at the rate of fifty
11 cents (\$0.50) per tire.

12 b. The plan shall be approved by the Department before
13 construction of the project begins.

14 c. Any unit of local or county government baling waste
15 tires shall not accumulate more than fifty waste tire
16 bales prior to beginning construction of an approved
17 project.

18 d. Waste tires baled pursuant to this paragraph cannot be
19 obtained from tire manufacturers, retailers,
20 wholesalers, retreaders, or automotive dismantlers and
21 parts recyclers.

22 e. Any unit of local or county government authorized to
23 receive reimbursement for the use of baled waste tires

1 in an engineering project shall report and certify
2 whole waste tires by number. The governmental unit
3 shall by sworn affidavit provide sufficient
4 information to the Tax Commission to verify that the
5 unit has utilized the tires in accordance with the
6 purposes of the Oklahoma Waste Tire Recycling Act; and

7 5. If the Fund contains insufficient funds in any month to
8 satisfy the eligible reimbursements under this subsection, the Tax
9 Commission shall apportion the payments among the qualified
10 applicants under this subsection according to the percentage of
11 waste tires processed, collected and transported, or utilized.

12 D. 1. After the allocations under subsections B and C of this
13 section are made, any remaining monies in the Fund shall be
14 available for TDF facilities and waste tire facilities that produce
15 crumb rubber for compensation at the rate of Twenty-nine Dollars
16 (\$29.00) per ton of processed or whole waste tires used for energy
17 or fuel recovery or the production of crumb rubber.

18 2. The production of crumb rubber shall be considered a
19 compensable event separate from and in addition to any compensation
20 for waste tire processing under subsection C of this section.

21 3. TDF facilities and waste tire facilities authorized to
22 receive reimbursement under this subsection shall report and certify
23 tire material used by weight.

1 4. The facilities shall by sworn affidavit provide to the Tax
2 Commission sufficient information to verify that the facility has
3 used the tires in accordance with the purposes of the Oklahoma Waste
4 Tire Recycling Act.

5 5. If the Fund contains insufficient funds in any month to
6 satisfy the eligible reimbursements under this subsection, the Tax
7 Commission shall apportion the payments among the qualified
8 applicants according to the percentage of waste tires used for
9 energy or fuel recovery or the production of crumb rubber.

10 E. After the allocations under subsections B, C and D of this
11 section are made, any remaining monies in the Fund shall be
12 disbursed as additional compensation to waste tire facilities or TDF
13 facilities for the collection and transportation of waste tires from
14 Oklahoma tire dealers, automotive dismantlers and parts recyclers,
15 solid waste landfill sites, and dumps certified by the Department
16 priority cleanup list, and delivering the tires to a waste tire
17 facility or a TDF facility. The Tax Commission shall apportion the
18 payments under this subsection among the qualified applicants
19 according to the percentage of waste tires collected and
20 transported.

21 F. Waste tire facilities, TDF facilities, or persons,
22 corporations or other legal entities authorized by the provisions of
23 the Oklahoma Waste Tire Recycling Act to receive reimbursement shall

1 demonstrate that the facilities or legal entities have successfully
2 complied with the requirements of the Oklahoma Waste Tire Recycling
3 Act through the filing of appropriate applications, reports, and
4 other documentation that may be required by the Tax Commission and
5 the Department.

6 SECTION 3. AMENDATORY 27A O.S. 2001, Section 2-11-409,
7 as amended by Section 4, Chapter 230, O.S.L. 2005, and as renumbered
8 by Section 13, Chapter 230, O.S.L. 2005 (27A O.S. Supp. 2006,
9 Section 2-11-401.6), is amended to read as follows:

10 Section 2-11-401.6 A. 1. The Oklahoma Tax Commission shall
11 promulgate rules to carry out the provisions of the Oklahoma Waste
12 Tire Recycling Act which pertain to the remittance of fees and to
13 the allocation of monies accruing to the Waste Tire Recycling
14 Indemnity Fund.

15 2. The Tax Commission shall prescribe forms, containing
16 documentation as required by the Oklahoma Waste Tire Recycling Act,
17 to be used by a waste tire facility, TDF facility, or person,
18 corporation or other legal entity authorized to receive
19 reimbursement.

20 3. On at least a monthly basis, the Tax Commission shall
21 evaluate and process applications.

22 4. The Tax Commission shall make periodic inspections of ~~tire~~
23 ~~dealers and motor license agents to ensure compliance with the~~

1 ~~provisions of Section 2-11-401.2 of this title, and shall make~~
2 ~~periodic inspections of~~ applicants for compensation to ensure
3 compliance with the provisions of Section 2-11-401.4 of this title.
4 The Tax Commission shall submit a summary of the results of those
5 inspections in an annual report to the office of the State Auditor
6 and Inspector.

7 5. Upon receipt of any referral from the Department of
8 Environmental Quality, as set out in paragraph 4 of subsection B of
9 this section, it shall be the duty of the Tax Commission to promptly
10 undertake proceedings in accordance with the recommendations of the
11 Department. The Tax Commission shall timely report the results of
12 the proceedings to the Department.

13 B. 1. The Environmental Quality Board shall promulgate rules
14 for the permitting of waste tire facilities under the Oklahoma Solid
15 Waste Management Act and for the certification of any entity to
16 receive compensation under the provisions of the Oklahoma Waste Tire
17 Recycling Act.

18 2. The Department of ~~Environmental Quality~~ shall file a report
19 with the Legislature and the Governor detailing the administration
20 of the Oklahoma Waste Tire Recycling Act and its effectiveness in
21 bringing about the cleanup of existing waste tire dumps and in
22 preventing the development of new dumps. The first report shall be

1 filed by no later than December 31, 1992. Subsequent reports shall
2 be filed every three (3) years thereafter.

3 3. In developing the priority cleanup list, the Department
4 shall prioritize those dumps where the landowner was a victim of
5 illegal dumping. Any other tire dump may be placed on the priority
6 cleanup list in cases where the administrative enforcement process
7 has been exhausted, and in such case, the Department may provide for
8 the cleanup of the dump pursuant to Section 2-11-401.7 of this
9 title.

10 4. The Department shall make periodic inspections of tire
11 dealers and motor license agents throughout this state to ensure
12 compliance with the provisions of Section 2-11-401.2 of this title.
13 Upon a finding of any failure to properly remit the appropriate fee
14 to the Tax Commission, the Department shall give written notice to
15 the alleged violator and may commence administrative enforcement
16 proceedings or civil proceedings in conformance with the provisions
17 of Sections 2-3-502 and 2-3-504 of this title. If the Department
18 determines that the fee has not been paid and there is no reasonable
19 cause for the nonpayment, the Department may assess a penalty of
20 double the amount that should have been remitted, to be added to the
21 delinquent fee. If the Department determines any tire dealer or
22 motor license agent has demonstrated a flagrant or repeated

1 disregard of the provisions of Section 2-11-401.2 of this title, it
2 shall refer such determination to the Tax Commission.

3 C. 1. By August 1, 1994, and every even year thereafter, the
4 State Auditor and Inspector shall conduct or shall contract with an
5 auditor or auditing company to conduct an independent audit of the
6 books, records, files and other such documents of the Commission and
7 the Department pertaining to the administration of the Fund. The
8 audit shall include, but shall not be limited to, a review of agency
9 and claimant compliance with state statutes regarding the Fund,
10 internal control procedures, adequacy of claim process expenditures
11 from and debits of the Fund regarding reimbursements,
12 administration, personnel, operating and other expenses charged by
13 the Tax Commission and Department, and the duties performed in
14 detail by agency personnel and Fund personnel for which payment is
15 made from the Fund. In addition the audit shall include
16 recommendations for improving claim processing, equipment needed for
17 claim processing, internal control or structure for administering
18 the Fund, and such other areas deemed necessary by the State Auditor
19 and Inspector.

20 2. The cost of the audit shall be borne by the Fund, pursuant
21 to the limits and provisions of Section 2-11-401.4 of this title.

22 3. Copies of the audit shall be submitted to the Governor, the
23 Speaker of the House of Representatives, the President Pro Tempore

1 of the Senate and the Chairs of the Appropriations Committee of both
2 the Oklahoma House of Representatives and the Oklahoma State Senate.

3 SECTION 4. This act shall become effective July 1, 2007.

4 SECTION 5. It being immediately necessary for the preservation
5 of the public peace, health and safety, an emergency is hereby
6 declared to exist, by reason whereof this act shall take effect and
7 be in full force from and after its passage and approval.

8 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 2-21-07 - DO
9 PASS, As Amended and Coauthored.