

**COMMITTEE AMENDMENT**  
HOUSE OF REPRESENTATIVES  
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB2159 \_\_\_\_\_  
Of the printed Bill  
Page \_\_\_\_\_ Section \_\_\_\_\_ Lines \_\_\_\_\_  
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by inserting in lieu thereof the following language:

**AMEND TITLE TO CONFORM TO AMENDMENTS**

Adopted: \_\_\_\_\_

Amendment submitted by: Don Armes

\_\_\_\_\_

\_\_\_\_\_  
Reading Clerk

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 PROPOSED COMMITTEE  
4 SUBSTITUTE  
5 FOR  
6 HOUSE BILL NO. 2159

By: Armes

7 PROPOSED COMMITTEE SUBSTITUTE

8 An Act relating to agriculture; amending 2 O.S. 2001,  
9 Section 16-26, as last amended by Section 1, Chapter  
10 316, O.S.L. 2008 (2 O.S. Supp. 2008, Section 16-26),  
11 which relates to emergency drought conditions and  
12 burning prohibitions; exempting certain act;  
13 authorizing use of fireworks in area under declared  
14 burn ban in certain circumstances; requiring a retail  
15 fireworks license in certain circumstances;  
16 specifying procedures for issuance of license;  
17 providing certain penalty; and declaring an  
18 emergency.

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

20 SECTION 1. AMENDATORY 2 O.S. 2001, Section 16-26, as  
21 last amended by Section 1, Chapter 316, O.S.L. 2008 (2 O.S. Supp.  
22 2008, Section 16-26), is amended to read as follows:

23 Section 16-26. A. 1. It is unlawful for any person to set  
24 fire to any forest, grass, range, crop, or other wildlands, or to  
build a campfire or bonfire, or to burn trash or other material that  
may cause a forest, grass, range, crop or other wildlands fire in  
any county, counties or area within a county where, because of

1 emergency drought conditions, there is gubernatorially proclaimed  
2 extraordinary danger from fire, unless the setting of any backfire  
3 during the drought emergency is necessary to afford protection as  
4 determined by a representative of the Division of Forestry, or  
5 unless it can be established that the setting of the backfire was  
6 necessary for the purpose of saving life or property. The burden of  
7 proving the necessity shall rest on the person claiming a defense.

8       2. The Division of Forestry shall advise the Governor when the  
9 lands described in paragraph 1 of this subsection in any county,  
10 counties or area within a county of this state because of emergency  
11 drought conditions are in extraordinary danger from fire. The  
12 Governor may by proclamation declare a drought emergency to exist  
13 and describe the general boundaries of the area affected.

14       3. Any proclamation promulgated by the Governor under authority  
15 of this subsection shall be effective immediately upon the  
16 Governor's signed approval of the emergency proclamation and shall  
17 supersede any resolution passed by a board of county commissioners  
18 pursuant to subsection B of this section. Notice of the  
19 proclamation shall occur through posting on the Oklahoma Department  
20 of Agriculture, Food, and Forestry's website and informing local  
21 news media. Evidence of publication or posting as herein provided  
22 shall be maintained by the Forestry Division.

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1 4. When conditions warrant, due notice of the termination of  
2 the emergency shall be promptly made by proclamation, which shall be  
3 published or posted in like manner as when officially declared.

4 5. Any person who violates this subsection is guilty of a  
5 misdemeanor punishable by a fine of not more than One Thousand  
6 Dollars (\$1,000.00), by imprisonment for not more than one (1) year,  
7 or both.

8 B. 1. It is unlawful for any person to set fire to any forest,  
9 grass, range, crop or other wildlands, or to build a campfire or  
10 bonfire, or to burn trash or other material that may cause a forest,  
11 grass, range, crop or other wildlands fire in any county of this  
12 state in which the board of county commissioners of the county has  
13 passed a resolution declaring a period of extreme fire danger. As  
14 used in this subsection, "extreme fire danger" means:

- 15 a. moderate, severe or extreme drought conditions exist  
16 as determined by the National Oceanic and Atmospheric  
17 Administration (NOAA) pursuant to its criteria, and  
18 b. no more than one-half (1/2) inch of precipitation is  
19 forecast for the next three (3) days, and  
20 c. fire occurrence is significantly greater than normal  
21 for the season and/or initial attack on a significant  
22 number of wildland fires has been unsuccessful due to  
23 extreme fire behavior, and  
24

1           d.    more than twenty percent (20%) of the wildfires in the  
2                    county have been caused by escaped debris or  
3                    controlled burning.

4           2.    A majority of the board of county commissioners may call an  
5 emergency meeting at any time to pass or revoke a resolution  
6 declaring a period of extreme fire danger in accordance with this  
7 section.

8           3.    A board of county commissioners shall have the documented  
9 concurrence of a majority of the chiefs, or their designees, of the  
10 municipal and certified rural fire departments located in the county  
11 that a period of extreme fire danger exists prior to passage of a  
12 resolution declaring a period of extreme fire danger in the county.  
13 The resolution shall be effective for a period not to exceed seven  
14 (7) days from the date of passage by the board of county  
15 commissioners, unless the burn ban is removed earlier by the same  
16 method by which it was approved.  If extreme fire danger conditions  
17 persist, subsequent resolutions may be passed by the board of county  
18 commissioners in the same manner as provided in this paragraph.  The  
19 board of county commissioners, in the resolution, may grant  
20 exceptions to the fire prohibition based on appropriate  
21 precautionary measures.

22           4.    Any resolution passed by a board of county commissioners  
23 under authority of this subsection shall be effective immediately  
24 upon passage of the resolution.  Notice of the resolution shall be

1 submitted to the Forestry Division of the Oklahoma Department of  
2 Agriculture, Food, and Forestry, all local news media, local law  
3 enforcement officials, and the state headquarters of the Department  
4 of Public Safety, the Oklahoma Tourism and Recreation Department and  
5 the Department of Wildlife Conservation on the day of passage of the  
6 resolution. Evidence of publication or posting as provided in this  
7 paragraph shall be maintained by the county.

8 5. The provisions of this subsection may be enforced by any law  
9 enforcement officer of this state.

10 6. Any person convicted of violating the provisions of this  
11 subsection shall be guilty of a misdemeanor and shall be subject to  
12 a fine of not more than Five Hundred Dollars (\$500.00), to  
13 imprisonment for not more than one (1) year, or to both such fine  
14 and imprisonment.

15 7. The selling of fireworks shall not be considered an act in  
16 violation of this subsection. The use of fireworks in an area under  
17 a declared burn ban shall be permitted only when all of the  
18 following conditions are met:

19 a. all licensed retailers selling fireworks in an area  
20 under a declared burn ban shall insert a safety  
21 message, drafted by the State Fire Marshal's office,  
22 in every customer bag when purchases are made,

23 b. a safety message shall be prepared by the State Fire  
24 Marshal's office, by the board of county commissioners

1 affected by the burn ban, and by industry  
2 representatives in areas under a declared burn ban and  
3 the message shall be distributed to all local news  
4 media, local law enforcement officials, the state  
5 headquarters of the Department of Public Safety, the  
6 Oklahoma Tourism and Recreation Department, and the  
7 Department of Wildlife Conservation, and

8 c. any fireworks activity is conducted over a  
9 nonflammable surface, is at least ten (10) feet from  
10 flammable vegetation, wind speeds are less than twenty  
11 (20) miles per hour, and a fire watch, other than the  
12 fireworks user, is posted at the fireworks site with  
13 pressurized water or a fire extinguisher.

14 8. Any person operating a retail location where fireworks are  
15 sold directly to the consumer shall be required to purchase a retail  
16 fireworks license. The retail license fee shall be Twenty Dollars  
17 (\$20.00) annually and may be purchased from any licensed wholesaler,  
18 manufacturer, or distributor. All license fees shall be collected  
19 by the State Fire Marshal Commission and shall be paid to the State  
20 Treasurer to the credit of the State Fire Marshal Revolving Fund.  
21 Ten Dollars (\$10.00) of each license fee collected shall be made  
22 available for public safety and education messages in areas under a  
23 burn ban from June 15 through July 6 and from December 1 to January  
24 2 each year to educate the public on the safe usage of fireworks.

1 Any unused fees from each calendar year shall remain in the State  
2 Fire Marshal Revolving Fund to be used for any lawful purpose.

3 9. Serially numbered licenses shall be made available at any  
4 time to the licensed wholesalers, manufacturers, or distributors in  
5 books of twenty licenses to a book. Retail licenses which are  
6 unsold may be exchanged for new licenses. Any person purchasing a  
7 retail fireworks license pursuant to this paragraph shall, at the  
8 time of purchasing the license, sign an affidavit attesting to the  
9 fact that the name, mailing address, and telephone number of the  
10 purchaser as it appears on the license are correct and that the  
11 purchaser operates a retail location where fireworks are sold  
12 directly to the consumer. Any person who knowingly signs a false  
13 affidavit, upon conviction, shall be guilty of perjury and punished  
14 in accordance with law.

15 SECTION 2. It being immediately necessary for the preservation  
16 of the public peace, health and safety, an emergency is hereby  
17 declared to exist, by reason whereof this act shall take effect and  
18 be in full force from and after its passage and approval.

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20 52-1-6873 SAB 02/17/09  
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