

1 STATE OF OKLAHOMA

2 2nd Session of the 54th Legislature (2014)

3 SUBCOMMITTEE RECOMMENDATION
4 FOR

5 HOUSE BILL NO. 2900

6 By: Morrissette

7 SUBCOMMITTEE RECOMMENDATION

8 An Act relating to cedar trees; amending 2 O.S. 2011,
9 Sections 18-403, 18-405 and 18-407, as amended by
10 Section 19, Chapter 304, O.S.L. 2012 (2 O.S. Supp.
11 2013, Section 18-407), which relate to the Eastern
12 Red Cedar Registry Board Act; moving administration,
13 support and expenditure of funds of the Eastern Red
14 Cedar Registry Board from the Oklahoma Department of
15 Agriculture, Food, and Forestry to the Oklahoma
16 Department of Commerce; adding member to the Board;
17 creating the Oklahoma Resource Reclamation Act;
18 declaring the public interest in managing private
19 unoccupied lands in the state for certain purpose;
20 specifying certain goals; defining infested lands and
21 abandoned property; stating duty of absentee
22 landowners to manage and control infestations of
23 trees and other fuel sources; stating duty of
24 absentee landowner to remove Eastern Red Cedar trees
under certain conditions; causing certain trees,
vegetation and fuel sources to be declared abandoned
property under certain circumstances; providing for
certain notification to and response by landowner;
providing for approval or disapproval of the
landowner response or forest management plan;
authorizing state and local officials to remove
infestation upon failure of the absentee landowner to
respond; providing a preference for certain
harvesters; establishing liability for removal costs;
providing for an agreement for reimbursement of costs
for removal; encouraging certain insurers to offer
incentives for policyholders who implement a certain
program; defining term; allowing an owner of certain
property to have the property reclassified; directing
the county assessor to reclassify certain property;

1 providing for reassessment upon certain conditions;
2 providing in lieu tax treatment for certain property;
3 requiring verification by the county assessor;
4 allowing the county assessor to request additional
5 information; providing for approval in writing;
6 setting limit on the number of acres that may be
7 approved; requiring the county assessor to verify
8 limit; directing the Oklahoma Tax Commission to keep
9 certain records; requiring filing of approval and
10 election with county assessor; setting in lieu tax
11 rate; setting filing deadline; providing for payment
12 to county treasurer; providing for apportionment
13 according to existing millage levies; providing for
14 in lieu tax treatment; disqualifying property for
15 certain exemption; providing penalty for nonpayment;
16 amending 68 O.S. 2011, Section 2805, which relates to
17 ad valorem taxes; expanding list of in lieu taxes;
18 amending 74 O.S. 2011, Section 85.44D, as amended by
19 Section 757, Chapter 304, O.S.L. 2012 (74 O.S. Supp.
20 2013, Section 85.44D), which relates to purchasing
21 preferences for products made from Oklahoma-harvested
22 trees; modifying certain date; deleting purchasing
23 preference; requiring the Purchasing Division of the
24 Office of Management and Enterprise Services to
register certain manufacturers into the vendor
registration system; directing the Department to
waive certain fees; providing for codification;
providing for noncodification; providing for
recodification; providing an effective date; and
declaring an emergency.

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

SECTION 1. AMENDATORY 2 O.S. 2011, Section 18-403, is
amended to read as follows:

Section 18-403. A. There is hereby created the Eastern Red
Cedar Registry Board. The Board shall be under the authority of the
~~State Board of Agriculture~~ Oklahoma Department of Commerce. The
Board shall consist of the following members:

1 1. The Governor shall appoint three members as follows:

2 a. one member representing a property owner in the state,

3 b. one member engaged in the business of harvesting
4 Eastern Red Cedar trees in the state, and

5 c. one member engaged in the business of manufacturing
6 products from Eastern Red Cedar trees;

7 2. The Speaker of the House of Representatives shall appoint
8 two members as follows:

9 a. one member with a background or experience in
10 marketing agricultural products, and

11 b. one member with a background or experience in
12 renewable energy;

13 3. The President Pro Tempore of the State Senate shall appoint
14 two members as follows:

15 a. one member from a higher education institution in The
16 Oklahoma State System of Higher Education who
17 specializes in agricultural production, and

18 b. one member from a higher education institution in The
19 Oklahoma State System of Higher Education who
20 specializes in forestry and forest management;

21 4. The Director of the Oklahoma Department of Commerce;

22 5. The Commissioner of Agriculture, or a designee;

23 ~~5.~~ 6. The Executive Director of the Oklahoma Conservation
24 Commission;

1 ~~6.~~ 7. The Executive Director of the Department of Environmental
2 Quality, or designee;

3 ~~7.~~ 8. A member of the Corporation Commission, or designee; and

4 ~~8.~~ 9. A member appointed by and representing the Natural
5 Resources Conservation Service of the United States Department of
6 Agriculture.

7 B. The initial appointment for each member appointed by the
8 Governor shall be for progressive terms of one (1) through three (3)
9 years. The initial appointment for each member appointed by the
10 Speaker of the House of Representatives shall be for progressive
11 terms of one (1) and two (2) years. The initial appointment for
12 each member appointed by the President Pro Tempore of the State
13 Senate shall be for progressive terms of one (1) and two (2) years.
14 Subsequent appointments shall be for three-year terms. Members
15 shall continue to serve until their successors are appointed. Any
16 vacancy shall be filled in the same manner as the original
17 appointment. No member shall serve more than two consecutive terms.

18 C. The members of the Board appointed pursuant to paragraphs 1,
19 2 and 3 of subsection A of this section may nominate up to sixteen
20 persons who are residents of the state to serve on a citizens'
21 auxiliary group. The nominations shall be approved by a majority
22 vote of the Board. Members of the citizens' auxiliary group shall
23 not have voting rights and privileges on the Board and shall serve
24 three-year terms. The citizens' auxiliary group will provide

1 information and feedback to the Board on issues related to the
2 Eastern Red Cedar tree and shall assist the Board in achieving its
3 duties as set forth in the Eastern Red Cedar Registry Board Act.

4 SECTION 2. AMENDATORY 2 O.S. 2011, Section 18-405, is
5 amended to read as follows:

6 Section 18-405. Contingent upon the availability of funding and
7 agency resources, the Oklahoma Department of ~~Agriculture, Food, and~~
8 ~~Forestry~~ Commerce shall provide support, resources, supplies and
9 information as required by the Eastern Red Cedar Registry Board to
10 implement the provisions of the Eastern Red Cedar Registry Board
11 Act, including but not limited to support in marketing development
12 and promotion, identification of financial resources and grants, and
13 grant application submission.

14 SECTION 3. AMENDATORY 2 O.S. 2011, Section 18-407, as
15 amended by Section 19, Chapter 304, O.S.L. 2012 (2 O.S. Supp. 2013,
16 Section 18-407), is amended to read as follows:

17 Section 18-407. There is hereby created in the State Treasury a
18 revolving fund for the Eastern Red Cedar Registry Board to be
19 designated the "Eastern Red Cedar Revolving Fund". The fund shall
20 be a continuing fund, not subject to fiscal year limitations, and
21 shall consist of all monies received by the ~~State Board of~~
22 ~~Agriculture~~ Oklahoma Department of Commerce for the Eastern Red
23 Cedar Registry Board from the state income tax checkoff as provided
24 for in Section 18-408 of this title, the special license plate

1 issued pursuant to Section 1135.5 of Title 47 of the Oklahoma
2 Statutes, any state-appropriated funds, federal funds, donations,
3 grants, contributions, and gifts from any public or private source.
4 All monies accruing to the credit of said fund are hereby
5 appropriated and may be budgeted and expended by the ~~State Board of~~
6 ~~Agriculture~~ Oklahoma Department of Commerce as directed by the
7 Eastern Red Cedar Registry Board for the purposes set forth in the
8 Eastern Red Cedar Registry Board Act. Expenditures from said fund
9 shall be made upon warrants issued by the State Treasurer against
10 claims filed as prescribed by law with the Director of the Office of
11 Management and Enterprise Services for approval and payment.

12 SECTION 4. NEW LAW A new section of law not to be
13 codified in the Oklahoma Statutes reads as follows:

14 Sections 5 through 9 of this act shall be known and may be cited
15 as the "Oklahoma Resource Reclamation Act".

16 SECTION 5. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 5059.9 of Title 74, unless there
18 is created a duplication in numbering, reads as follows:

19 A. It is in the public interest that private unoccupied lands
20 within the state be managed to:

- 21 1. Discourage the proliferation of wildfires;
- 22 2. Reduce and control the infestation of Eastern Red Cedar
23 trees on lands; and

24

1 3. Modify the growth of Eastern Red Cedar trees from areas
2 within one hundred (100) feet of homes or other structures, so as to
3 reduce the threat and severity of wildfires in accordance with the
4 Firewise Program guidelines adopted by the National Fire Protection
5 Association.

6 B. For purposes of this section, unoccupied private lands shall
7 be considered infested and containing abandoned property if:

8 1. There are alive and growing Eastern Red Cedar trees, other
9 tree species, vegetation and other fuel sources, excluding
10 endangered species of trees or vegetation and cross timber or
11 valuable hardwood, which are not less than five (5) feet tall and
12 are at a density of at least fifty trees per acre;

13 2. The ratio of vegetation and trees that are harmful to open
14 land constitutes a forest within definitions of the Oklahoma
15 Forestry Code; and

16 3. City or county officials have determined, based on
17 information regarding infestation published on the website of the
18 Oklahoma Department of Agriculture, Food, and Forestry, that the
19 infestation is harmful or threatening to adjacent private or public
20 property.

21 C. It shall be the duty of every private absentee landowner in
22 each county in the state to manage and control infestation in a
23 manner as shall be sufficient to prevent or reduce the threat of
24 wildfires and will comply with the purposes of the Oklahoma Forestry

1 Code. It shall also be the duty of every private absentee landowner
2 to remove Eastern Red Cedar trees on the property if it is
3 determined that the property is infested as set forth in subsection
4 B of this section.

5 D. 1. Failure of an absentee landowner to manage, control and
6 remove infestation deemed to be a fire hazard shall cause those
7 trees, vegetation and other fuel sources declared by local
8 officials, in compliance with local nuisance ordinances, to be
9 abandoned property.

10 2. By written complaint, the absentee landowner shall be
11 notified of the intent to remove the abandoned property and shall
12 have thirty (30) days to submit a response or to file a forest
13 management plan detailing actions to be taken and intent to comply
14 with fire safety recommendations. The city, county or state
15 officials shall approve or disapprove the response or forest
16 management plan.

17 3. If the absentee landowner fails to respond to the complaint
18 or to file a forest management plan, city, county or state officials
19 shall determine the most appropriate method for removal of the
20 infestation, based on information regarding infestation published on
21 the website of the Oklahoma Department of Agriculture, Food, and
22 Forestry, and take action to remove the infestation. The city,
23 county or state officials shall give preference to harvesters
24 registered with the Eastern Red Cedar Registry Board. Any costs

1 associated with the removal incurred by city, county or state
2 officials shall be the responsibility of, and shall be reimbursed
3 by, the absentee landowner.

4 4. An agreement to reimburse removal costs shall be entered
5 into between the absentee landowner and the county or city whose
6 nuisance or abandoned property ordinance(s) was violated or the
7 state agency whose forest management practices were violated and
8 whose assets were extended to remove the infestation.

9 SECTION 6. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 5059.10 of Title 74, unless
11 there is created a duplication in numbering, reads as follows:

12 Insurers duly licensed in the state writing property insurance
13 are hereby encouraged to provide incentives to policyholders who
14 implement and conform to Firewise Program guidelines adopted by the
15 National Fire Protection Association, including creating a fuel-free
16 defensible zone around homes and other structures.

17 SECTION 7. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 2902.5 of Title 68, unless there
19 is created a duplication in numbering, reads as follows:

20 A. As used in this section, "qualifying Eastern Red Cedar
21 property" means property:

22 1. Either:

23 a. classified as cropland, improved pasture, native
24 pasture or timber waste which does not have

1 improvements such as a homestead exemption filed on
2 the property and is infested with red cedar
3 encroachment of more than fifty trees per acre which
4 are at least five (5) feet tall, or

5 b. classified as nonagricultural and which is infested
6 with red cedar encroachment of more than fifty trees
7 per acre which are at least five (5) feet tall;

8 2. Registered pursuant to the Eastern Red Cedar Registry Board
9 Act; and

10 3. On which the owner is actively engaged in the removal of red
11 cedar.

12 B. An owner of qualifying Eastern Red Cedar property may apply
13 to the county assessor for the county in which the property is
14 located to have the property reclassified to timber waste or the
15 lowest classification category allowed in the county. If the county
16 assessor verifies that the property is qualifying Eastern Red Cedar
17 property, the county assessor shall reclassify the property outside
18 of the regular interval of reassessment, with or without visual
19 inspection. The qualifying Eastern Red Cedar property shall remain
20 at the reclassified category until the owner has removed the
21 infestation of Eastern Red Cedar, at which time the county assessor
22 may reassess the property and assign a different classification and
23 the property owner may apply for the in lieu tax treatment pursuant
24 to this section.

1 C. An owner of qualifying Eastern Red Cedar property who has
2 removed the infestation may apply for in lieu tax treatment for a
3 single tax year pursuant to this section. The owner must reapply
4 and be approved pursuant to this section for each additional tax
5 year.

6 D. Upon application by a property owner for the in lieu tax
7 treatment, the county assessor for the county in which the property
8 is located shall verify that the applicant satisfies the provisions
9 of subsection A of this section for the applicable tax year and has
10 removed the infestation. The county assessor may request such
11 additional information as may be necessary in order to complete the
12 verification required by this subsection. If approved, the county
13 assessor shall provide the approval to qualifying property owners in
14 writing specifying the tax year for which the property qualifies
15 pursuant to this section.

16 E. A total of not more than three hundred thousand (300,000)
17 acres of qualifying Eastern Red Cedar property statewide shall be
18 approved during any one (1) tax year for the in lieu tax treatment,
19 which number represents approximately one-third (1/3) of the total
20 number of acres of property in the state which are classified by
21 county assessors as timber waste. Prior to approval of an
22 application by an owner of qualifying Eastern Red Cedar property for
23 the in lieu tax treatment, the county assessor shall report the
24 number of acres seeking the in lieu tax treatment to the Oklahoma

1 Tax Commission and verify with the Commission that the statewide cap
2 of three hundred thousand (300,000) acres has not been met. The
3 Oklahoma Tax Commission shall keep a record of the total number of
4 acres approved statewide during each tax year.

5 F. Beginning January 1, 2014, an owner of qualifying Eastern
6 Red Cedar property that has been approved pursuant to subsection D
7 of this section who then files an election with the county assessor
8 of the county in which the property is located to be subject to the
9 in lieu tax payment requirements imposed by this section shall be
10 subject to an in lieu tax which shall be levied at the rate of One
11 Dollar (\$1.00) per acre of qualifying Eastern Red Cedar property for
12 the applicable tax year. An election authorized by this subsection
13 shall be filed not later than March 15 of the applicable tax year.
14 Once the election to be subject to the in lieu tax treatment
15 provided by this section has been filed, it shall be irrevocable and
16 the in lieu tax treatment for the applicable tax year shall not be
17 subject to modification.

18 G. The in lieu tax payment required by this section shall be
19 paid to the county treasurer of the county or counties in which
20 qualifying Eastern Red Cedar property is located not later than
21 December 1 of the applicable tax year.

22 H. The revenue derived from the in lieu tax required by this
23 section shall be apportioned by the county treasurer each year based
24 upon the ratio that the millage levy of each local taxing

1 jurisdiction in which the qualifying Eastern Red Cedar property is
2 located bears to the total amount of all millage levies imposed by
3 all local taxing jurisdictions in which the qualifying eastern red
4 cedar property is located. The provisions of this subsection shall
5 be applicable to general fund millage levies, building fund millage
6 levies and sinking fund millage levies imposed each year.

7 I. The payment of the tax imposed pursuant to the provisions of
8 this section shall be in lieu of any and all ad valorem taxes that
9 would otherwise be imposed as a result of the millage levied against
10 the taxable value of the qualifying Eastern Red Cedar property for
11 the applicable tax year.

12 J. If qualifying Eastern Red Cedar property is subject to the
13 in lieu tax payment required by the provisions of this section, the
14 qualifying Eastern Red Cedar property owner shall not be eligible
15 for the exemption for qualifying manufacturing concerns otherwise
16 authorized pursuant to Section 2902 of Title 68 of the Oklahoma
17 Statutes.

18 K. If the in lieu tax payment required by this section is not
19 paid by December 31 of the applicable tax year, the principal amount
20 of the in lieu tax payment shall bear interest at the rate of
21 fifteen percent (15%) per annum and there shall be imposed an
22 additional penalty of Five Hundred Dollars (\$500.00) for each month
23 after December that the in lieu tax is not paid. The penalty shall
24 accrue at the end of each month if the in lieu tax has not been paid

1 as of that date. Interest and penalty shall be apportioned in the
2 same manner as prescribed by this section for the principal amount
3 of the in lieu tax payment.

4 SECTION 8. AMENDATORY 68 O.S. 2011, Section 2805, is
5 amended to read as follows:

6 Section 2805. The following fees or taxes levied by the
7 provisions of the Oklahoma Statutes shall be in lieu of ad valorem
8 tax, whether in lieu of real property tax, personal property tax, or
9 both as provided by law:

10 1. The registration fees and taxes imposed upon aircraft by
11 Section 251 et seq. of Title 3 of the Oklahoma Statutes;

12 2. Registration fees for motor vehicles as provided in Section
13 1103 of Title 47 of the Oklahoma Statutes, except as otherwise
14 specifically provided;

15 3. The fee imposed upon transfers of used vehicles in lieu of
16 the ad valorem tax upon inventories of used motor vehicles by
17 Section 1137.1 of Title 47 of the Oklahoma Statutes;

18 4. The registration and license fees imposed upon vessels and
19 motors pursuant to the Oklahoma Vessel and Motor Registration Act,
20 Section 4001 et seq. of Title 63 of the Oklahoma Statutes;

21 5. The taxes levied upon the gross production of substances
22 pursuant to Section 1001 of this title;

23 6. The taxes levied upon the gross production of substances
24 pursuant to Section 1020 of this title;

1 7. The tax imposed upon gross receipts pursuant to Section 1803
2 of this title;

3 8. The tax imposed upon certain textile products pursuant to
4 Section 2001 of this title;

5 9. The tax imposed upon certain freight cars pursuant to
6 Section 2202 of this title;

7 10. The tax imposed on certain parts of the inventories, both
8 new and used items, owned and/or possessed for sale by retailers of
9 farm tractors and other equipment pursuant to Sections ~~±~~ 5401
10 through ~~4~~ 5404 of this ~~act~~ title;

11 11. The tax imposed upon inventories of new vehicles and
12 certain vessels pursuant to Section 5301 of this title; ~~and~~

13 12. The tax imposed on qualifying Eastern Red Cedar property
14 pursuant to Section 7 of this act; and

15 13. Such other fees or taxes as may be expressly provided by
16 law to be in lieu of ad valorem taxation.

17 SECTION 9. AMENDATORY 74 O.S. 2011, Section 85.44D, as
18 amended by Section 757, Chapter 304, O.S.L. 2012 (74 O.S. Supp.
19 2013, Section 85.44D), is amended to read as follows:

20 Section 85.44D A. It is the intent of the Legislature that all
21 state agencies procure and use products or materials made from or
22 utilizing materials from trees harvested in Oklahoma when such
23 products or materials are available.

24

1 B. By ~~July 1, 2011~~ November 1, 2014, the Purchasing Division of
2 the Office of Management and Enterprise Services ~~when accepting bids~~
3 ~~for state purchases of products and materials~~ shall give preference
4 ~~to the suppliers of wood products made from or products manufactured~~
5 ~~utilizing materials from trees harvested in Oklahoma if the price~~
6 ~~for the products and materials is not substantially higher than the~~
7 ~~price for other wood products and materials and the quality and~~
8 ~~grade requirements are otherwise comparable~~ register any
9 manufacturer of products made from trees harvested in Oklahoma which
10 is registered with the Eastern Red Cedar Registry Board pursuant to
11 Section 5059.4 of Title 74 of the Oklahoma Statutes on the central
12 purchasing vendor registration system for state agency purchasing,
13 in the appropriate category or categories of commodities. The
14 Department shall waive any registration fee for the manufacturer for
15 the first year of registration.

16 C. By July 1, 2011, the Purchasing Division of the Office of
17 Management and Enterprise Services shall promulgate rules and
18 implement a program for extending state procurement specifications
19 to products made from or manufactured utilizing materials from trees
20 harvested in Oklahoma and identifying the products.

21 SECTION 10. RECODIFICATION 2 O.S. 2011, Sections 18-401
22 and 18-402, shall be recodified as Sections 5059.1 and 5059.2 of
23 Title 74 of the Oklahoma Statutes, unless there is created a
24 duplication in numbering.

1 SECTION 11. RECODIFICATION 2 O.S. 2011, Section 18-403,
2 as amended by Section 1 of this act, shall be recodified as Section
3 5059.3 of Title 74 of the Oklahoma Statutes, unless there is created
4 a duplication in numbering.

5 SECTION 12. RECODIFICATION 2 O.S. 2011, Section 18-404,
6 shall be recodified as Section 5059.4 of Title 74 of the Oklahoma
7 Statutes, unless there is created a duplication in numbering.

8 SECTION 13. RECODIFICATION 2 O.S. 2011, Section 18-405,
9 as amended by Section 2 of this act, shall be recodified as Section
10 5059.5 of Title 74 of the Oklahoma Statutes, unless there is created
11 a duplication in numbering.

12 SECTION 14. RECODIFICATION 2 O.S. 2011, Section 18-406,
13 shall be recodified as Section 5059.6 of Title 74 of the Oklahoma
14 Statutes, unless there is created a duplication in numbering.

15 SECTION 15. RECODIFICATION 2 O.S. 2011, Section 18-407,
16 as last amended by Section 3 of this act, shall be recodified as
17 Section 5059.7 of Title 74 of the Oklahoma Statutes, unless there is
18 created a duplication in numbering.

19 SECTION 16. RECODIFICATION 2 O.S. 2011, Section 18-408,
20 shall be recodified as Section 5059.8 of Title 74 of the Oklahoma
21 Statutes, unless there is created a duplication in numbering.

22 SECTION 17. This act shall become effective July 1, 2014.

23 SECTION 18. It being immediately necessary for the preservation
24 of the public peace, health and safety, an emergency is hereby

1 declared to exist, by reason whereof this act shall take effect and
2 be in full force from and after its passage and approval.

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