

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

HOUSE BILL 3337

By: Roberts (Sean)

AS INTRODUCED

An Act relating to waters and water rights; creating the Oklahoma Water Center; authorizing water pricing for sale of water; designating board members; requiring certain annual report; describing certain advisory and research duties; providing for development of severance fee schedule; requiring advisement to Oklahoma Water Resources Board for review of applications; establishing severance fee for out-of-state water transfer; exempting previous contracts from severance fee; requiring fees collected to be place in revolving fund; providing for distribution of fees collected; requiring proceeds go towards water storage infrastructure; requiring benefitting agencies to develop water plans approved by that agency; requiring public agencies to submit report; creating the Oklahoma Water Center Revolving Fund; describing certain fund specifics; amending 82 O.S. 2011, Sections 1085.2, as amended by Section 1064, Chapter 304, O.S.L. 2012 and 1085.22 (82 O.S. Supp. 2017, Section 1085.2), which relate to authority of Oklahoma Water Resources Board; deleting language disallowing out-of-state water sales; repealing 74 O.S. 2011, Section 1221.A, which relates to moratorium to preserve surface and ground water; repealing 82 O.S. 2011, Sections 1B and 1E, which relate to a sale or exportation of water; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1089.1 of Title 82, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created the Oklahoma Water Center. The Center shall be a water science and research advisory council to the Oklahoma Water Resources Board, shall assist in the implementation of the Oklahoma Comprehensive Water Plan which is authorized by law and as is updated, and shall recommend to the Oklahoma Water Resources Board a water pricing structure and allocation of funds collected from the sale of water pursuant to the provisions of this act. The Oklahoma Water Resources Board may include provisions in the Oklahoma Comprehensive Water Plan specifying additional duties for the Center.

B. The Board of the Oklahoma Water Center shall consist of the following seven (7) members:

1. The Executive Director of the Oklahoma Water Resources Board, or a designee;

2. The Commissioner of the Oklahoma Department of Agriculture, Food, and Forestry, or a designee;

3. The Executive Director of the Department of Environmental Quality, or a designee;

4. The Director of the Department of Wildlife Conservation, or a designee;

1        5. The Executive Director of the Oklahoma Conservation  
2 Commission or a designee; and

3        6. Two members, one each to be appointed by the President Pro  
4 Tempore of the Senate and the Speaker of the House of  
5 Representatives, who shall serve two-year terms. Such appointments  
6 shall be made within sixty (60) days of the effective date of this  
7 act.

8        C. Members of the Board of the Oklahoma Water Center shall  
9 serve without compensation.

10       D. The Oklahoma Water Resources Board shall provide staff  
11 support for the Oklahoma Water Center.

12       E. Members who serve on the Board of the Oklahoma Water Center  
13 shall be exempt from the dual office holding prohibitions of Section  
14 6 of Title 51 of the Oklahoma Statutes.

15       F. The Oklahoma Water Center shall act in accordance with the  
16 provisions of the Oklahoma Open Meeting Act and the Oklahoma Open  
17 Records Act.

18       G. The Oklahoma Water Center shall submit a report to the  
19 Governor, President Pro Tempore of the Senate and Speaker of the  
20 House of Representatives by December 31 each year.

21       SECTION 2.       NEW LAW       A new section of law to be codified  
22 in the Oklahoma Statutes as Section 1089.2 of Title 82, unless there  
23 is created a duplication in numbering, reads as follows:

24

1       A. The Oklahoma Water Center shall have the following advisory  
2 and research duties:

3       1. Act as a water science and research advisory council to the  
4 Oklahoma Water Resources Board in implementing the Oklahoma  
5 Comprehensive Water Plan;

6       2. Review state and federal assistance opportunities for  
7 coordinated research, planning, design and construction for water-  
8 related environmental infrastructure and resource protection and  
9 development projects, including projects for water supply, storage,  
10 treatment and related facilities, water quality protection,  
11 wastewater treatment and related facilities, environmental  
12 restoration, surface water resource protection, flood control,  
13 recreation and development, as identified in the Oklahoma  
14 Comprehensive Water Plan;

15       3. Recommend a set of water management tools customized to each  
16 watershed planning region of the state;

17       4. Recommend specific actions to implement the provisions of  
18 the Oklahoma Comprehensive Water Plan which will:

19           a. promote stewardship of the water resources of the  
20 state,

21           b. protect and maintain water rights and the priority  
22 status of all legally authorized entities, including  
23 federally recognized tribal governments,  
24

- c. protect the diverse customs, culture, environment and economic stability of the state,
- d. protect both the water supply and water quality of water in the state,
- e. promote cooperative strategies, based on concern for meeting the basic needs of all Oklahomans,
- f. meet the interstate compact obligations of the state,
- g. provide a basis for prioritizing infrastructure investment, and
- h. provide statewide continuity of policy and management relative to water resources of the state; and

5. Perform other duties as may be identified in the Oklahoma Comprehensive Water Plan.

B. The Oklahoma Water Center shall make recommendations for inclusion in the Oklahoma Comprehensive Water Plan addressing the following issues:

1. Identify water conservation strategies and policies that will maximize the beneficial use of water, including reuse and recycling, by conjunctive management of water resources to promote nonforfeiture of water rights;

2. Promote drought management planning designed to address drought emergencies, strategies for prevention of drought-related emergencies in the future and coordination of statewide drought planning;

- 1        3. Recognition of the relationship between water availability  
2 and land-use decisions;
- 3        4. Promote river riparian and watershed restoration projects  
4 that focus on protecting water supplies, improving water quality and  
5 complying with the federal Endangered Species Act of 1973 mandates;
- 6        5. Develop water rights transfer policies that protect the  
7 legal authority, customs, culture, environment and economic health  
8 and stability of the diverse communities in the state while  
9 providing for timely and efficient transfers of water between users  
10 to meet both short-term shortages and long-term economic development  
11 needs;
- 12       6. Implement strategies and mechanisms for achieving  
13 coordination with all levels of local, state, federal and tribal  
14 governments;
- 15       7. Integration of regional water plans with state water plan  
16 policies and strategies, if appropriate and consistent;
- 17       8. Integration of water plans of water supply purveyors,  
18 including those of local governments, privately owned public  
19 utilities, associations, cooperatives and irrigation districts with  
20 state water plan policies and strategies, as appropriate and  
21 consistent;
- 22       9. Identify water-related infrastructure and management  
23 investment needs and opportunities to leverage federal and other  
24 funding;

1        10. Collaborate with the research institutions and entities in  
2 the state to address the water challenges of the state and to bring  
3 to the state demonstration projects in desalination, conservation,  
4 watershed restoration, weather modification and other technological  
5 approaches to enhance water supply and management; and

6        11. Develop and encourage the adoption of water conservation  
7 plans and drought response plans, specifying minimum components for  
8 the conservation and drought plans, and giving priority  
9 consideration for financial assistance made available through  
10 limited state and federal funding to water users that have adopted  
11 water conservation and drought plans.

12        SECTION 3.        NEW LAW        A new section of law to be codified  
13 in the Oklahoma Statutes as Section 1089.3 of Title 82, unless there  
14 is created a duplication in numbering, reads as follows:

15        The Oklahoma Water Center shall have the following authority and  
16 duties relating to the transfer of water for use outside the state:

17        1. Development of a severance fee schedule for the transfer of  
18 water apportioned to Oklahoma by interstate compacts outside the  
19 state. The severance fee schedule shall be adopted for use by the  
20 Oklahoma Water Resources Board;

21        2. Review, recommend and advise the Oklahoma Water Resources  
22 Board on applications submitted to the Board for transfer of any  
23 water apportioned to Oklahoma by interstate compacts outside the  
24 state and to advise the Board on the issuance of a regular,

1 temporary or provisional permit. The Board may disapprove an  
2 application if the Board determines the amount of such water  
3 requested will interfere with the amount needed for use within the  
4 state or that the proposed beneficial use will interfere with  
5 existing or proposed beneficial uses within the state; and

6 3. Review any proposed applications for the storage, diversion  
7 or carriage of water to be transferred outside the state and monitor  
8 the completion of the project.

9 SECTION 4. NEW LAW A new section of law to be codified  
10 in the Oklahoma Statutes as Section 1089.4 of Title 82, unless there  
11 is created a duplication in numbering, reads as follows:

12 A. For new permits approved after the effective date of this  
13 act by the Oklahoma Water Resources Board for the use of water  
14 apportioned to Oklahoma by interstate compacts to be transferred  
15 outside the state, there is hereby levied upon the use of the water  
16 a severance fee based on the acre-foot volume of water transferred.  
17 The amount of severance fee shall be recommended by the Oklahoma  
18 Water Center and adopted by the Oklahoma Water Resources Board. The  
19 Center shall require permit holders to meter and report the volume  
20 of water used annually and to submit the severance fee by June 30 of  
21 each year.

22 B. Any modification or renewal of a permit issued prior to the  
23 effective date of this act for the use of any water which transfers  
24



1 the water outside the state shall be exempt from the severance fee  
2 authorized pursuant to this section.

3 C. All monies collected by the Center from the water severance  
4 fee levied pursuant to this section shall be deposited in the  
5 Oklahoma Water Center Revolving Fund created in Section 7 of this  
6 act.

7 SECTION 5. NEW LAW A new section of law to be codified  
8 in the Oklahoma Statutes as Section 1089.5 of Title 82, unless there  
9 is created a duplication in numbering, reads as follows:

10 A. The Oklahoma Water Center shall distribute all severance  
11 fees collected from the transfer of water pursuant to Section 4 of  
12 this act and deposited in the Oklahoma Water Center Revolving Fund  
13 to public agencies for projects as established in Section 6 of this  
14 act.

15 B. For purposes of the Oklahoma Water Center Act, a "public  
16 agency" shall be defined as any agency, political subdivision, or  
17 unit of local government of this state including, but not limited  
18 to, municipal corporations, quasi municipal corporations, special  
19 purpose districts and local service districts, any agency of the  
20 state government, any agency of the United States, any Indian tribe  
21 recognized as such by the federal government, and any political  
22 subdivision of another state.

1       SECTION 6.       NEW LAW       A new section of law to be codified  
2 in the Oklahoma Statutes as Section 1089.6 of Title 82, unless there  
3 is created a duplication in numbering, reads as follows:

4       A. All funds distributed by the Oklahoma Water Center to public  
5 agencies as provided for in Section 5 of this act shall be used by  
6 the public agency for the development of surface water storage  
7 infrastructure facilities in the state.

8       B. Each public agency receiving funds shall develop and adopt a  
9 water improvement plan which shall establish a priority for the  
10 implementation of projects using funds distributed pursuant to the  
11 Oklahoma Water Center Act.

12       C. Any project using funds distributed to a public agency  
13 pursuant to the Oklahoma Water Center Act shall be approved by a  
14 majority of the governing body of the public agency.

15       D. Each public agency which receives funds from the Oklahoma  
16 Water Center Revolving Fund during the preceding fiscal year shall  
17 make a written report to the Oklahoma Water Center outlining the  
18 expenditure of the funds and any other information the Center may  
19 require. This report shall be due by December 31 after the end of  
20 the fiscal year in which the funds were received.

21       SECTION 7.       NEW LAW       A new section of law to be codified  
22 in the Oklahoma Statutes as Section 1089.7 of Title 82, unless there  
23 is created a duplication in numbering, reads as follows:

1       There is hereby created in the State Treasury a revolving fund  
2 for the Oklahoma Water Resources Board to be designated the  
3 "Oklahoma Water Center Revolving Fund". The fund shall be a  
4 continuing fund, not subject to fiscal year limitations, and shall  
5 consist of all monies received by the Oklahoma Water Resources Board  
6 from the water severance fee levied pursuant to Section 5 of this  
7 act. All monies accruing to the credit of said fund are hereby  
8 appropriated and may be budgeted and distributed by the Oklahoma  
9 Water Resources Board, in consultation with the Oklahoma Water  
10 Center, as provided for in Sections 5 and 6 of this act.  
11 Expenditures from said fund shall be made upon warrants issued by  
12 the State Treasurer against claims filed as prescribed by law with  
13 the Director of Office of Management and Enterprise Services for  
14 approval and payment.

15       SECTION 8.       AMENDATORY       82 O.S. 2011, Section 1085.2, as  
16 amended by Section 1064, Chapter 304, O.S.L. 2012 (82 O.S. Supp.  
17 2017, Section 1085.2), is amended to read as follows:

18       Section 1085.2 In addition to any and all other authority  
19 conferred upon it by law, the Oklahoma Water Resources Board shall  
20 also have authority:

- 21       1. Generally to do all such things as in its judgment may be  
22 necessary, proper or expedient in the accomplishment of its duties;
- 23       2. To make such contracts and execute such instruments as in  
24 the judgment of the Board are necessary or convenient to the

1 exercise of any of the powers conferred upon it by law. ~~Provided,~~  
2 ~~however, no contract shall be made conveying the title or use of any~~  
3 ~~waters of the State of Oklahoma to any person, firm, corporation or~~  
4 ~~other state or subdivision of government, for sale or use in any~~  
5 ~~other state, unless such contract be specifically authorized by an~~  
6 ~~act of the Oklahoma Legislature and thereafter as approved by it;~~

7 3. To negotiate contracts and other agreements with the federal  
8 government to arrange for the development of water resources and for  
9 the storage and distribution of water for beneficial purposes;  
10 provided, however, that the Board shall act in such capacity only as  
11 an intermediary in assisting others, and under no circumstances  
12 shall the Board have any power or authority to build, construct or  
13 finance any waterways, dams or other such projects for itself,  
14 except as may be otherwise specifically provided by the laws of this  
15 state;

16 4. To develop statewide and local plans to assure the best and  
17 most effective use and control of water to meet both the current and  
18 long-range needs of the people of Oklahoma; to cooperate in such  
19 planning with any public or private agency, entity or person  
20 interested in water, and is directed to prepare such plans for  
21 consideration and approval by the Legislature; and to aid, at all  
22 times, counties, incorporated cities and towns and special purpose  
23 districts in the state in promoting and developing flood control and  
24 water conservation in the state;

1        5. To employ and fix the compensation of such officers, agents,  
2 attorneys, technical personnel and employees of the Board as it  
3 shall deem necessary to the proper performance of its duties;

4        6. To adopt and use an official seal;

5        7. To promulgate such rules and make orders as it may deem  
6 necessary or convenient to the exercise of any of the powers or the  
7 performance of any of the duties conferred or imposed upon it by  
8 this or any other law;

9        8. To institute and maintain, or to intervene in, any actions  
10 or proceedings in or before any court, board, commission or officer  
11 of this or any other state or of the United States to stop or  
12 prevent any use, misuse, appropriation or taking of any of the  
13 waters of this state which is in whole or in part in violation of  
14 any law, or of any rules, orders, judgments or decrees of any court,  
15 board, commission or officer of this or any state or of the United  
16 States; and to institute and maintain or intervene in any other  
17 action or proceeding where the Board deems it necessary to the  
18 proper execution and discharge of any of the powers or duties  
19 conferred or imposed upon it by law;

20        9. To determine, charge and receive fees to be collected in  
21 advance for the filing and examination of applications for permits  
22 to:

23            a. construct water use works,

24            b. appropriate groundwater,

- c. appropriate stream water,
- d. establish vested rights,
- e. inspect water use works,
- f. file other papers,
- g. make copies of documents,
- h. make prints of maps and drawings,
- i. certify copies of documents, maps and drawings,
- j. file transfers of water rights,
- k. gauge wells and ditches, changes in point of diversion and changes in place of use of water,
- l. test wells, and
- m. hold hearings, make records and provide transcripts of hearings.

Such fees shall not be collected from any state agency or state institution;

10. To negotiate contracts or water compacts with the federal government or any department or bureau thereof, or with any other state for the purpose of obtaining assistance and cooperation in the accomplishment of the purpose of flood control and water conservation and use in the state. To that end, the Board may match funds with the federal government and with other states upon such terms as shall be agreed upon and approved by the Governor of the state, with the limitation that contracts or water compacts with other states for the division and apportionment of the cost and use

1 of the water controlled by interstate projects shall be submitted to  
2 and approved by the Legislature of the state and the Governor of the  
3 state, and Congress and the President of the United States  
4 conformable to the State and Federal Constitutions;

5 11. To accept gifts and grants of money and property or any  
6 interest therein;

7 12. To provide funding from federal and state monies for water  
8 and wastewater project purposes to eligible entities for preliminary  
9 engineering reports and planning and feasibility studies;

10 13. To sell or dispose of real or personal property held by the  
11 Board when no longer needed in such manner as provided by law;

12 14. To make appropriations of water to all special purpose  
13 districts;

14 15. To execute and deliver, without actual consideration  
15 therefor, a written release of any easement or easement deed  
16 heretofore given to the Conservation Commission of the State of  
17 Oklahoma, the Planning and Resources Board or the Oklahoma Water  
18 Resources Board on lands situated in this state, whenever it shall  
19 appear to said Oklahoma Water Resources Board that the need for such  
20 easement or easement deed no longer exists; provided, the owner of  
21 the lands affected shall file a written application for such release  
22 with the Oklahoma Water Resources Board;

23 16. To adopt, modify or repeal and promulgate standards of  
24 quality of the waters of the state and to classify such waters

1 according to their best uses in the interest of the public under  
2 such conditions as the Board may prescribe for the prevention,  
3 control, and abatement of pollution. The standard of quality of  
4 waters of the state adopted by the Board pursuant to the provisions  
5 of Section 1085.30 of this title shall be utilized by all  
6 appropriate state environmental agencies in implementing their  
7 respective duties to abate and prevent pollution to the waters of  
8 the state;

9 17. To review disputes involving service areas or territories,  
10 rates for raw or treated water, and abrogation clauses in contracts  
11 among municipalities and rural water districts or not-for-profit  
12 rural water corporations; to recommend mediation and refer parties  
13 in appropriate disputes to mediators and provide technical  
14 information to such mediators; and to recommend other means of  
15 resolving disputes; provided, that no party to such dispute may  
16 initiate action in any district court regarding the dispute until  
17 written notice of the dispute has been filed with the Board;  
18 provided further that the provisions of this paragraph shall not be  
19 construed to diminish any right of access to the court granted to a  
20 party by law;

21 18. To provide workshop training sessions for board members of  
22 rural water districts and not-for-profit rural water corporations  
23 throughout the year on a regional basis for the purpose of study and  
24 instruction in the areas of financing, law and the ethics, duties



1 and responsibilities of such board members. Such training shall be  
2 provided by the Board in conjunction with the Oklahoma Rural Water  
3 Association as required by law. To the extent possible, the Board  
4 shall attempt to schedule training workshops in three-hour segments  
5 to be held in any public facility at a time convenient to the  
6 attendees;

7 19. To establish an agency special account through the Office  
8 of Management and Enterprise Services and the State Treasurer's  
9 Office as necessary for the collection and distribution of funds,  
10 including funds of sponsors and registration fees related to  
11 conferences, meetings and training sessions; and

12 20. To accredit persons having requisite knowledge in  
13 floodplain management and in minimization and prevention of flood  
14 hazards and losses.

15 SECTION 9. AMENDATORY 82 O.S. 2011, Section 1085.22, is  
16 amended to read as follows:

17 Section 1085.22 For the purpose of providing water for  
18 municipal, agricultural, industrial and other uses the Water  
19 Conservation Storage Commission is required to sell, transfer or  
20 lease, in whole or in part, any acquired storage facilities  
21 including land or interests therein to any municipality, industry or  
22 other local interests, upon the request of the contracting party at  
23 the conclusion of the pay-out of the storage, except that any such  
24 party requesting title shall be responsible for the pro rata part of

1 the maintenance and operation costs of such storage. In no event  
2 shall the Commission require any payment for such transfer in excess  
3 of the costs to the Commission of the construction and operation of  
4 the storage facility and the interest on obligations of the  
5 Commission. ~~The Commission shall not permit the sale or resale of~~  
6 ~~any water for use outside the State of Oklahoma.~~ Where lands or  
7 interest therein are acquired by the Commission and not utilized for  
8 the purposes for which it was acquired, or which have been utilized  
9 but such utilization has ceased, then, after ten (10) years from the  
10 date of acquisition, or ten (10) years from the date utilization  
11 ceased, as the case may be, such land must be sold at public auction  
12 to the highest bidder; and mandamus by any interested party will be  
13 to require such sale.

14 SECTION 10. REPEALER 74 O.S. 2011, Section 1221.A, is  
15 hereby repealed.

16 SECTION 11. REPEALER 82 O.S. 2011, Sections 1B and 1E,  
17 are hereby repealed.

18 SECTION 12. This act shall become effective November 1, 2018.  
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