ENGROSSED SENATE AMENDMENT
TO
ENGROSSED HOUSE BILL NO. 2029 BY: DUNEGAN, LEIST and STEIDLEY of the HOUSE

and

FISHER and MICKLE of the SENATE

(PECANS RESEARCH AND MARKETING - OKLAHOMA PECAN COUNCIL TO COLLECT SPECIAL ASSESSMENTS - EMERGENCY)

AUTHOR: Add the following Senate Coauthor: WILKERSON

AMENDMENT NO. 1. Strike the stricken title, enacting clause and entire bill and insert

AN ACT RELATING TO PECAN RESEARCH AND MARKETING; AUTHORIZING ESTABLISHMENT OF OKLAHOMA PECAN COUNCIL; STATING PURPOSE OF COUNCIL; AUTHORIZING COLLECTION OF CERTAIN ASSESSMENTS; AUTHORIZING ESTABLISHMENT OF PUBLIC TRUST; STATING CERTAIN REQUIREMENTS; STATING COMPOSITION OF BOARD OF TRUSTEES; STATING TERMS AND QUALIFICATIONS OF TRUSTEES; PROVIDING FOR REMOVAL OF TRUSTEES; AUTHORIZING REIMBURSEMENT OF TRUSTEES FOR TRAVEL EXPENSES; REQUIRING CERTAIN OATH; REQUIRING APPROVAL OF ATTORNEY GENERAL; REQUIRING FILING OF TRUST AGREEMENT WITH SECRETARY OF STATE; REQUIRING CERTAIN FIDELITY BONDS TO BE POSTED; PROVIDING FOR AMENDMENT OF TRUST AGREEMENT; REQUIRING ADOPTION

AND APPROVAL OF BYLAWS; REQUIRING COUNCIL TO SUBMIT ANNUAL BUDGET TO GOVERNOR; REQUIRING COMPLIANCE WITH CERTAIN LAWS AND REGULATIONS; REQUIRING CERTAIN AUDIT; PROVIDING FOR EXPENSE OF AUDIT; REQUIRING FILING OF AUDIT WITH CERTAIN OFFICIALS; AUTHORIZING STATE AUDITOR AND INSPECTOR TO EMPLOY CERTAIN PERSONS TO PERFORM AUDIT; STATING POWERS OF COUNCIL; PROHIBITING CERTAIN ACTIONS BY COUNCIL; STATING CERTAIN AUTHORITY OF THE COUNCIL; LIMITING LIABILITY OF TRUSTEES; PROVIDING PROCEDURE FOR TERMINATION OF TRUST AGREEMENT; EXCEPTING COUNCIL FUNDS FROM CERTAIN LIMITATIONS; PROVIDING FOR CONSTRUCTION OF DEBTS AND OBLIGATIONS OF COUNCIL; EXCEPTING CERTAIN COUNCILS FROM COMPLIANCE WITH CERTAIN LAWS; STATING CONTRACTUAL TERMS; PROVIDING FOR DISPOSITION OF CERTAIN FUNDS TO OKLAHOMA STATE UNIVERSITY; PROVIDING FOR NONCODIFICATION; AND DECLARING AN EMERGENCY.

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

SECTION 1. A. The provisions of this act shall constitute the authorization of the state required by the federal Pecan Promotion and Research Act of 1990 for the establishment of an Oklahoma Pecan Council meeting the requirements and conditions imposed by this act and for the collection of the special assessments allowed by the federal Pecan Promotion and Research Act of 1990.

B. The authorization specified by subsection A of this section shall be effective only if:

1. The Oklahoma Pecan Council is established as a public trust pursuant to this act with the state as a beneficiary;

2. The Oklahoma Pecan Council is established for the furtherance and accomplishment of research, education and market development of pecans produced in Oklahoma;

3. The instrument creating the trust provides for the appointment, succession, powers, duties, terms and manner of removal of trustees and such other conditions and requirements specified by this act and the federal Pecan Promotion and Research Act of 1990 and rules promulgated thereto. In all respects, terms of the instrument shall be controlling;

4. The instrument creating the trust provides for the appointment of five trustees, one of whom shall be a buyer or sheller of pecans, one of whom shall be a researcher in a field related to furthering the production or usage of pecans, and three of whom shall be pecan growers, and all of whom shall be appointed by the Governor from lists of not less than three names for each trustee position submitted to the Governor by the Oklahoma Pecan Growers Association. The term of office of the trustees shall be staggered and shall be for five (5) years. The initial trustees shall serve for terms of one (1) year, two (2) years, three (3) years, four (4) years, and five (5) years respectively in the order of their appointment by the Governor and shall serve until their successor has been duly appointed and qualified. A trustee shall, at the time of appointment, be a citizen and resident of the State of Oklahoma for at least one (1) year prior to the date of his appointment. Trustees may be removed from office for cause, including incompetency, neglect of duty or malfeasance in office, by a district court having jurisdiction. Trustees shall serve without compensation, except that they shall be entitled to reimbursement for all actual and necessary travel expenses incurred in the performance of their official duties in accordance with the provisions of the State Travel Reimbursement Act, Section 500.1 et

seq. of Title 74 of the Oklahoma Statutes. Such travel expenses shall be paid from funds of the trust authority;

5. Each person becoming a trustee takes the oath of office required of an elected public officer;

6. As a condition precedent receive approval from the Attorney General that the trust is in the proper form and compatible with the laws of this state; and

7. A certified copy of the trust agreement is filed with the Secretary of State.

C. Each officer handling funds of the public trust shall furnish a good and sufficient fidelity bond in an amount and with surety as may be specified and approved by the Governor of this state. The cost of the bond shall be paid from funds of the trust authority.

D. Any public trust established pursuant to this act shall not be amended without a two-thirds (2/3) vote of approval of the trustees of such trust. Any such amendment is subject to the approval of the Governor of the State of Oklahoma. Such amendments shall be sent to the Governor within fifteen (15) days of their adoption.

E. The trustees of the Oklahoma Pecan Council created pursuant to this act shall make and adopt bylaws for the due and orderly administration of regulation of the affairs of the Council. All bylaws and amendments thereto of the Council shall be submitted in writing to the Governor of this state and to the Speaker of the House of Representatives and the President Pro Tempore of the Senate. The Governor shall approve the proposed bylaws before they take effect.

F. The Oklahoma Pecan Council shall comply with:

1. The annual budget provisions of the state requiring a balanced budget. A copy of the budget shall be submitted to the Governor each year;

2. The Public Competitive Bidding Act of 1974;

3. The Oklahoma Open Records Act;

4. The Oklahoma Open Meeting Act;

5. Any rules or regulations established by the United States Secretary of Agriculture pursuant to the federal Pecan Promotion and Research Act of 1990; and

6. The provisions of this act.

G. 1. The trustees of the Oklahoma Pecan Council shall cause an audit to be made of, including but not limited to, the funds, accounts, and fiscal affairs of such trust, such audit to be ordered within thirty (30) days of the close of each fiscal year of the trust.

2. The necessary expense of said audits, including the cost of typing, printing, and binding, shall be paid from funds of the trust.

3. The audits required by this subsection shall be certified with the opinion of a certified public accountant or a licensed public accountant. The required audit shall adhere to standards set by the State Auditor and Inspector. One copy of the annual audit shall be filed with the State Auditor and Inspector, one copy with the Governor of the State of Oklahoma and one copy with the Speaker of the House of Representatives and the President Pro Tempore of the Senate not later than six (6) months following the close of each fiscal year of the trust.

4. In the event that the copy of such audit as required shall not be filed with the State Auditor and Inspector within the time herein provided, the State Auditor and Inspector hereby is authorized to employ, at the cost and expense of the trust, a certified public accountant or licensed public accountant to make the audit herein required.

H. The Oklahoma Pecan Council is authorized to:

1. Promote the production and usage of pecans through research, education and market development;

2. Employ and compensate such personnel as required to fulfill the purposes of this act;

3. Retain legal council as is required to fulfill the purposes of this act;

4. Sue and be sued;

5. Initiate prosecution and civil remedies necessary to collect any special assessments due and owing to the Council;

6. Cooperate with local, state or national organizations, whether public or private, in carrying out the purposes of this act, and to enter into such contracts as may be necessary; provided, however, no Council funds shall be used, directly or indirectly, or as a result of contract or agreement with other persons or organizations, in supporting or opposing political candidates, political officeholders, and legislation, either state or national;

7. Make such reasonable expenditures of funds as is necessary to carry out the provisions of this act;

8. Call and conduct such meetings and elections as may be necessary in carrying out the provisions of this act; and

9. Exercise such other powers as necessary to carry out the purposes of this act.

I. The Oklahoma Pecan Council is not authorized to:

1. Issue or sell bonds;

2. Acquire lands by use of eminent domain; or

3. Engage in any activity or transaction that is not expressly authorized in the instruments or articles prescribing its creation except by express consent of the Legislature of the state.

J. 1. The Oklahoma Pecan Council shall be the regularly constituted authority of the beneficiary for the performance of the functions for which the trust shall have been created.

2. No trustee shall be charged personally with any liability whatsoever by reason of any act or omission committed or suffered in the performance of such trust or in the operation of the trust property; and any act, liability for any omission or obligation of a trustee or trustees, in the execution of such trust, or in the operation of the trust property, shall be subject to the Governmental Tort Claims Act.

K. The Oklahoma Pecan Council may be terminated by agreement of the trustees and the Governor of this state, or may be terminated by the Legislature; provided, that such trust shall not be terminated while there exists outstanding any contractual obligations chargeable against the trust property.

L. Funds collected by the Oklahoma Pecan Council pursuant to this act shall not be subject to state budget and expenditure limitations. Such funds shall at no time become monies of the state or become part of the general budget of the state. Debts or obligations of the Council shall not be construed to be debts or obligations of this state.

M. Any council established pursuant to the provisions of this act as a trust with the state as a beneficiary shall not otherwise be required to comply with any provisions established pursuant to Sections 176 through 180.4 of Title 60 of the Oklahoma Statutes.

N. Compliance with the provisions of this act, by the Oklahoma Pecan Council, shall be and constitute a binding contract with the State of Oklahoma for the acceptance of the beneficial interest in the trust property by the designated beneficiary and the application of the proceeds of the trust property and its operation for the purposes, and in accordance with the stipulations of the trust instrument. The State of Oklahoma, as beneficiary, agrees to provide any resulting funds derived pursuant to this act to the College of Agriculture and Natural Resources of the Oklahoma State University.

SECTION 2. Section 1 of this act shall not be codified in the Oklahoma Statutes.

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

Passed the Senate the 15th day of April, 1992.

President of the Senate

Passed the House of Representatives the ____ day of _____, 1992.

Speaker of the House of Representatives