

ENROLLED HOUSE
BILL NO. 2029

BY: DUNEGAN, LEIST and
STEIDLEY of the HOUSE

and

FISHER, MICKLE and
WILKERSON of the SENATE

AN ACT RELATING TO PECANS; AUTHORIZING THE OKLAHOMA PECAN MARKETING BOARD TO IMPLEMENT AND ENFORCE THE FEDERAL PECAN PROMOTION AND RESEARCH ACT OF 1990; PROVIDING FOR AUTHORIZATION OF STATE FOR ESTABLISHMENT OF AN OKLAHOMA PECAN MARKETING BOARD WITH AUTHORITY TO COLLECT SPECIAL ASSESSMENTS; SETTING CONDITIONS; PROVIDING PURPOSES REQUIRING PUBLIC TRUST; REQUIRING CERTAIN POWERS AND DUTIES; REQUIRING CERTAIN RESTRICTIONS ON FUNDS; REQUIRING AUDITS; REQUIRING CERTAIN APPROVAL BY THE GOVERNOR AND ATTORNEY GENERAL; PROVIDING FOR APPOINTMENT; PROVIDING FOR REMOVAL; PROVIDING FOR LIABILITY; PROVIDING FOR TERMINATION; MAKING CERTAIN FUNDS NON-STATE MONIES; PROVIDING FOR TRUST PROPERTY; PROHIBITING CERTAIN ACTIONS; PROVIDING FOR CODIFICATION; PROVIDING FOR NONCODIFICATION; AND DECLARING AN EMERGENCY.

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 1551.1 of Title 2, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Pecan Marketing Board established pursuant to the authorization of Enrolled House Bill No. 2029 of the 2nd Session of the 43rd Oklahoma Legislature shall be the public entity authorized to implement and enforce the federal Pecan Promotion and Research Act of 1990 and to collect the special assessment so authorized.

SECTION 2. A. The provisions of this section 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 Marketing Board meeting the requirements and conditions imposed by this section 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 Marketing Board is established as a public trust pursuant to this section with the state as a beneficiary;

2. The Oklahoma Pecan Marketing Board is established for the furtherance and accomplishment of research projects to promote 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 section 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. The Governor may appoint such members from lists of not less than three names for each trustee position submitted to the Governor by duly established statewide or area-wide pecan associations or organizations in this state. 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. Trustees may be removed from office by the Governor for cause. 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 trust instrument. Any authorized travel expenses shall be paid from funds of the trust authority;

5. As a condition precedent, receive approval from the Attorney General that the trust is in the proper form; and

6. 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. The trust established pursuant to this section 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 Marketing Board created pursuant to this section shall make and adopt bylaws for the due and orderly administration of regulation of the affairs of the Board. All bylaws and amendments thereto of the Board 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 Marketing Board 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 section.

G. Any monies obtained by the Board pursuant to this section shall be deposited in an insured interest-bearing account.

H. 1. The trustees of the Oklahoma Pecan Marketing Board 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.

I. The Oklahoma Pecan Marketing Board is authorized to:

1. Promote the production and usage of pecans through research projects;
2. Employ and compensate such personnel as required to fulfill the purposes of this section;
3. Retain legal counsel as is required to fulfill the purposes of this section;
4. Sue and be sued;
5. Initiate prosecution and civil remedies necessary to collect any special assessments due and owing to the Board;
6. Cooperate with local, state or national organizations, whether public or private, in carrying out the purposes of this section, and to enter into such contracts as may be necessary; provided, however, no Board funds shall be used, directly or indirectly, or as a result of contract or agreement with other persons or organizations, in lobbying, or in supporting or opposing political candidates, political officeholders, or legislation, either state or national;
7. Make such reasonable expenditures of funds as is necessary to carry out the provisions of this section;
8. Call and conduct such meetings and elections as may be necessary in carrying out the provisions of this section; and
9. Exercise such other powers as necessary to carry out the purposes of this section.

J. The Oklahoma Pecan Marketing Board 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.

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

2. Except for acts of dishonesty, 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. Except for acts of dishonesty, any act, liability for any omission or obligation of a trustee or the Board, in the execution of such trust, or in the operation of the trust property, shall be subject to limits specified by the Governmental Tort Claims Act. In no event shall the state be construed to be or become liable for any act, omission or obligation of a trustee or of the Board.

L. The Oklahoma Pecan Marketing Board 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.

M. Funds collected by the Oklahoma Pecan Marketing Board pursuant to this section 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 Board shall not be construed to be debts or obligations of this state.

N. Any board established pursuant to the provisions of this section 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.

O. Compliance with the provisions of this section, by the Oklahoma Pecan Marketing Board, 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 section to the College of Agriculture and Natural Resources of the Oklahoma State University.

SECTION 3. Section 2 of this act shall not be codified in the Oklahoma Statutes.

SECTION 4. 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 House of Representatives the 20th day of May, 1992.

Speaker of the House of
Representatives

Passed the Senate the 22nd day of May, 1992.

President of the Senate