STATE OF OKLAHOMA

2nd Session of the 45th Legislature (1996)

HOUSE BILL NO. 2487 By: Leist

AS INTRODUCED

An Act relating to agriculture; amending 2 O.S. 1991, Section 2-4, as last amended by Section 25, Chapter 140, O.S.L. 1994 (2 O.S. Supp. 1995, Section 2-4), which relates to the powers and duties of the State Department of Agriculture; transferring jurisdiction over the importation of wildlife from the Department of Wildlife Conservation to the State Department of Agriculture; providing exceptions; providing certain actions; specifying penalty; amending 29 O.S. 1991, Section 3-103, as last amended by Section 1, Chapter 255, O.S.L. 1995, 4-102, 4-115 and 7-801, as amended by Section 18, Chapter 318, O.S.L. 1994 (29 O.S. Supp. 1995, Sections 3-103 and 7-801), which relate to the Oklahoma Wildlife Conservation Code; removing certain jurisdiction; clarifying language; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 2 O.S. 1991, Section 2-4, as last amended by Section 25, Chapter 140, O.S.L. 1994 (2 O.S. Supp. 1995, Section 2-4), is amended to read as follows:

Section 2-4. The State Board of Agriculture shall have the following powers, which shall be in addition to those given in other parts of this Code:

1. Adopt and prescribe the use of a seal, which shall be in the custody of the Secretary of the Board;

2. Promulgate such rules as by the Board shall be deemed necessary, expedient or appropriate to the performance, enforcement or carrying out of any of the purposes, objectives, or provisions of this Code;

3. Initiate and prosecute civil or criminal actions and proceedings when deemed necessary to enforce or carry out any of the provisions of this Code;

4. Appoint authorized agents to make inspections or investigations and to perform other services for the Board or any division of the State Department of Agriculture;

5. Consolidate any of the divisions established by this Code or transfer any of the functions or activities thereof to another division, place additional functions or activities in a division, establish new divisions, and create new or additional positions in the Department, when deemed conducive to a more efficient administration and enforcement of laws pertaining to agriculture;

6. Sell, exchange or otherwise dispose of property that has been acquired by the State Department of Agriculture, when such property becomes obsolete or is no longer needed by the Department;

7. Have jurisdiction over all matters affecting animal industry and animal quarantine regulation;

8. Issue stop-sale orders and quarantine regulations;

9. Employ, appoint or contract with and fix the duties and compensation of the director of each division of the Department and

such technicians, inspectors, stenographers, clerks, aides, supervisors, investigators, attorneys and other personnel and help, either on a full-time, part-time or contractual basis, as in the judgment and discretion of the Board shall be deemed necessary, expedient or appropriate to the performance or carrying out of any of the purposes, objectives or provisions of this Code;

10. Fix the qualifications of the personnel in the State Department of Agriculture, and require any official or employee of the State Department of Agriculture to furnish a bond for the faithful performance of duty, or for the faithful accounting of public funds coming into his hands, or for any other purpose, and the premium on any such bond shall be paid from funds that are available for the operation of the State Department of Agriculture;

11. Accept and use, for any purpose designated, and on the terms and conditions thereof, grants of money and other property from the federal government or any department or agency thereof and from any state or state agency and from any other source;

12. Enter into cooperative agreements with the federal government or any state, or any department or agency of either;

13. Coordinate the various activities of the Department with those of the federal government and other states on matters pertaining to agriculture, and enter into agreements for such purpose;

14. Revoke, or suspend for any period up to one (1) year, any license issued by the Board or any division of the Department, when the Board finds that the holder of such license has violated any of the provisions of this Code or any rule ~~or regulation~~ of the Board;

15. Adopt a master plan and promulgate rules and regulations for the protection of both state-owned and private forestry, grazing and other lands from damage by fire and for suppressing fires on such lands. In carrying out said master plan the Board is hereby authorized to enter into contractual agreements with the federal

government, local political subdivisions of the state and with individuals, private organizations, companies and corporations for protection from and for the suppression of such fires and for such purposes to expend funds as may be available for such services. To effectuate the purposes of this act, the Board is hereby authorized to enter into contractual agreements with private landowners for such protection and suppression of fires; provided, however, that such private landowners shall reimburse the Board for actual expenses incurred in the protection and suppression of fires on privately owned lands, pursuant to this act; ~~and~~

16. Have jurisdiction over all matters affecting agriculture as contained and set out in this title, which have not been expressly delegated to another state or federal agency. The Department of Environmental Quality shall have environmental jurisdiction over:

a. (1) commercial manufacturers of fertilizers, grain and feed products, and chemicals, and over manufacturing of food and kindred products, tobacco, paper, lumber, wood, textile mill and other agricultural products,

(2) slaughterhouses, but not including feedlots at such facilities, and

(3) animal aquiculture and fish hatcheries, including, but not limited to, discharges of pollutants and storm water to waters of the state, surface impoundments and land application of wastes and sludge, and other pollution originating at such facilities, and

b. facilities which store grain, feed, seed, fertilizer, and agricultural chemicals that are required by federal NPDES regulations to obtain a permit for storm water discharges shall only be subject to the

jurisdiction of the Department of Environmental Quality with respect to such storm water discharges.

Any point source and nonpoint source discharges related to agriculture, as specified in paragraph 1 of subsection D of Section 6 of Title 27A of the Oklahoma Statutes, which require a federal National Pollutant Discharge Elimination Systems permit and which are not specified under subparagraphs a, b and c of this paragraph as being subject to the jurisdiction of the Department of Environmental Quality shall continue to be subject to the direct jurisdiction of the federal Environmental Protection Agency for issuance and enforcement of such permit and shall not be required to be permitted by the Department of Environmental Quality or the Department of Agriculture; and

17. Have jurisdiction over the importation of wildlife except for bears and cats. For purposes of this paragraph the term wildlife shall have the same meaning as such term is defined by Section 2-149.1 of Title 29 of the Oklahoma Statutes.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-4a of Title 2, unless there is created a duplication in numbering, reads as follows:

The State Board of Agriculture is authorized to regulate the importation of exotic wildlife except for bears and cats. No exotic wildlife under the jurisdiction of the Board shall be released into the wilds of Oklahoma without first obtaining written permission of the Commission. Any person releasing such exotic wildlife into the wilds of Oklahoma in violation of the provisions of this section shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than One Hundred Dollars ($100.00) nor more than Two Thousand Dollars ($2,000.00) or by imprisonment in the county jail for a period not to exceed thirty (30) days or by both such fine and imprisonment.

SECTION 3. AMENDATORY 29 O.S. 1991, Section 3-103, as last amended by Section 1, Chapter 255, O.S.L. 1995 (29 O.S. Supp. 1995, Section 3-103), is amended to read as follows:

Section 3-103. A. The Wildlife Conservation Commission shall constitute an advisory, administrative and policymaking board ~~with whom the~~ for the protection, restoration, perpetuation, conservation, supervision, maintenance, enhancement, and management of wildlife in this state as provided in the Oklahoma Wildlife Conservation Code except for the importation of wildlife into the State of Oklahoma. This exception shall not apply to the importation of bears and cats into this state. The importation of wildlife into this state except for bears and cats shall be regulated by the State Board of Agriculture pursuant to the Agricultural Code. The Director shall consult with the Commission regarding the administration of the affairs of the Department. The Commission is authorized and empowered to require from the Director complete reports and information relative to the affairs of the Department at such time and in such manner as the Commission may deem advisable. The Commission shall meet on the first Monday in each month in regular session and in special sessions as may be called by the Chairman or a majority of the Commission. The Commission may hold any regular or special session at any location within this state. Should a location be chosen other than Commission headquarters in Oklahoma City for a regular or special meeting, notice shall be posted at Commission headquarters in Oklahoma City as well as being advertised in the local newspaper of the city in which the meeting is to be held, at least one time during each of the two (2) weeks prior to such meeting. The advertisements shall include time, date and address of location of the meeting.

B. In addition to the other powers and duties prescribed by law, the Commission shall:

1. Institute an affirmative action plan setting goal of hiring women and minorities throughout the agency;

2. Elect a ~~chairman~~ chair, ~~vice-chairman~~ vice-chair, and secretary, who shall perform the duties required of them by the rules of the Commission and the statutes and Constitution of the State of Oklahoma. Said ~~chairman~~ chair, ~~vice-chairman~~ vice-chair, and secretary shall receive no extra compensation ~~therefor~~;

3. Appoint a Director, and determine the qualifications of the Director and all assistants and employees. A Commissioner shall not be eligible for employment in any position within the Department;

4. Prescribe rules and policies for the transaction of its business and the control of the Department;

5. Develop and implement a plan to provide step raises for Commission Employees so that discrepancies within pay levels within a pay grade will be eliminated;

6. Acquire by purchase, lease, gift, or devise, waters, real property, and personal property incident to the exercise of its functions and to maintain, operate, and dispose of the same;

7. Acquire real property by condemnation only when the Attorney General or other counsel deems it an appropriate means of clearing title from willing or unavailable sellers;

8. Supervise the establishment, extension, improvement, and operation of the wildlife refuges, propagation areas or stations, public hunting areas, public fishing areas, game management areas, and fish hatcheries;

9. Prescribe the manner of cooperation with the Tourism and Recreation Department, colleges and universities within the state, other state agencies, any agency of the federal government, and any city, town, school district, or any other agency or organization in study of conservation and propagation of wildlife and in the establishment, maintenance, and operation of visual educational

facilities, recreational facilities, and hunting and fishing facilities, in the study and propagation of wildlife;

10. Supervise the letting of all contracts and purchases for the Department, with all purchases of personal property to be made through the Purchasing Division of the Department of Central Services;

11. Authorize all claims or expenditures prior to incurring payment except as otherwise provided in this Code;

12. Prescribe rules on the use of vehicles owned by the Department by the Director, department heads and other essential employees as the Commission deems necessary in order to perform their duties;

13. Prescribe rules for the sale of all regular or special licenses;

14. Publicize and encourage the conservation and appreciation of wildlife and all other natural resources;

15. Regulate the seasons and harvest of wildlife;

16. Annually report to the Governor and the Legislature on the complete operation, activities, and plans of the Department, together with such recommendations for future activities as the Commission may deem to be in the best interest of the state; and

17. Provide the Governor and the Legislature with an annual inventory of all property and equipment.

SECTION 4. AMENDATORY 29 O.S. 1991, Section 4-102, is amended to read as follows:

Section 4-102. A. No person may engage in the private commercial production of catfish, minnows, fingerlings, fish, frogs or other water species without having first procured a license for such from the Director.

B. The fee for a license under this section, and the fee for the renewal of such license, shall be Ten Dollars ($10.00).

C. All licenses may be renewed so long as the applicant remains in operation and in the production of a particular species.

D. Nothing in this act shall be construed to provide for the ~~importation or~~ exportation of minnows and other fish species which are provided for specifically in Sections 4-105, 4-115 and 7-602 of this title.

E. Any person convicted of violating the provisions of this section shall be punished by a fine of not less than Twenty-five Dollars ($25.00) nor more than One Hundred Dollars ($100.00), or by imprisonment in the county jail for a period not to exceed ten (10) days, or by both such fine and imprisonment.

SECTION 5. AMENDATORY 29 O.S. 1991, Section 4-115, is amended to read as follows:

Section 4-115. A. No person may ship or transport minnows for sale into or out of this state without having first procured a license for such from the Director.

B. Commercial minnow export ~~and import~~:

1. Except as otherwise provided in the Oklahoma Wildlife Conservation Code, no person may harvest, attempt to harvest, assist in harvesting, sell, or buy for the purpose of exporting minnows from the waters of this state ~~or import into this state~~, without having first procured the proper license for such purposes from the Director. The fees for licenses under this section shall be set by the Commission for persons having an established residence in this state and who have been currently residing in this state for a period of one (1) year or more prior to the issuance of a license and for nonresidents;

2. Prior to the issuance of this license, the applicant shall file with the Department a surety bond issued by a company licensed to do business in this state in the sum of One Thousand Dollars ($1,000.00), conditioned upon the observance and compliance with the provisions of the Oklahoma Wildlife Conservation Code. This bond

shall be subject to forfeiture upon conviction for the violation of any of the provisions of the Oklahoma Wildlife Conservation Code or resolutions of the Department;

3. The Commission shall regulate the harvest season, harvest limits, exports limits, size and species to be harvested. The Commission shall issue such other regulations as it deems necessary and shall design all forms necessary for the operation of these provisions;

4. No minnows shall be harvested except during daylight hours from sunrise to sunset as set by the National Weather Service. The Commission shall designate the waters of this state where the harvest of minnows for export purposes shall be permitted;

5. All persons licensed as "Commercial Minnow Export Dealers" shall comply with Sections 6-401 and 6-501 of the Oklahoma Wildlife Conservation Code and with all resolutions of the Commission pertaining to the export of minnows from this state; and

6. Provided, however, any person leaving the state possessing three (3) dozen or fewer minnows or any person selling or shipping minnows raised in a regularly licensed commercial minnow hatchery shall be exempt from the licensing provisions of this section.

C. Any person convicted of violating any provisions of this section shall be punished by a fine of not less than One Hundred Dollars ($100.00) nor more than Two Hundred Dollars ($200.00).

SECTION 6. AMENDATORY 29 O.S. 1991, Section 7-801, as amended by Section 18, Chapter 318, O.S.L. 1994 (29 O.S. Supp. 1995, Section 7-801), is amended to read as follows:

Section 7-801. A. The Commission is authorized to regulate the importation of ~~exotic wildlife~~ <u>bears and cats</u>. No ~~exotic wildlife~~ <u>bears and cats</u> may be released into the wilds of Oklahoma without first obtaining written permission of the Director. Any person releasing such ~~exotic wildlife~~ <u>bears and cats</u> into the wilds of Oklahoma in violation of the provisions of this section shall be

deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than One Hundred Dollars ($100.00) nor more than Two Thousand Dollars ($2,000.00) or by imprisonment in the county jail for a period not to exceed thirty (30) days or by both such fine and imprisonment.

B. Any bear or cat that will grow to reach the weight of fifty (50) pounds or more held or maintained in violation of this section may be confiscated and disposed of by the Wildlife Department or other law enforcement agency after proper notice and hearing except in an emergency situation.

SECTION 7. This act shall become effective November 1, 1996.

45-2-7887 KSM