

STATE OF OKLAHOMA

2nd Session of the 45th Legislature (1996)

HOUSE BILL NO. 2984

By: Begley

AS INTRODUCED

An Act relating to agriculture; creating the Oklahoma Sorghum Resources Act; defining terms; creating the Oklahoma Sorghum Commission; providing for qualifications and composition; establishing districts; setting terms of office; providing for vacancies, meetings and quorum; providing for initial and subsequent elections; providing for petitions and applications; providing for eligibility; providing for procedures; providing for payment of reasonable election expenses; requiring rules; providing for ballots; requiring certified results; requiring for destruction of ballots; providing for contests and investigations; providing for certain powers, duties and responsibilities; providing for certain meetings and officers; providing for reimbursement; providing for certain assessments; providing procedures; providing for certain refunds; providing for a referendum and procedures thereto; creating the Oklahoma Sorghum Resources Fund; allowing certain investments; providing for codification; 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 1850.1 of Title 2, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Sorghum Resources Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1850.2 of Title 2, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Sorghum Resources Act:

1. "Commercial channels" means the sale of sorghum for any use, when sold to any commercial buyer, dealer, processor, cooperative, or to any person, public or private, who resells any sorghum or product produced from sorghum;

2. "Commercial quantities" means and includes all bushels of sorghum produced for market in any calendar year by any producer;

3. "Commission" means the Oklahoma Sorghum Commission;

4. "Department" means the Oklahoma State Department of Agriculture;

5. "President" means the President of the State Board of Agriculture; and

6. "Sorghum producer" or "producer" means an individual engaged in the production of sorghum, who markets sorghum in commercial quantities in Oklahoma, and includes both the owner and tenant.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1850.3 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created, in accordance with the provisions of the Oklahoma Sunset Law, the Oklahoma Sorghum Commission.

B. 1. With the exception of the ex officio nonvoting member, the Commission shall be composed of five (5) elected members who:

- a. are at least twenty-five (25) years of age and residents of Oklahoma,
- b. have been actually engaged in the production of sorghum in this state for a period of at least five (5) years, and
- c. derive a substantial portion of their income from the production of sorghum.

2. The President of the Oklahoma State Board of Agriculture shall be an ex officio nonvoting member of the Commission. The President may appoint a designee to serve on the Commission in the place of the President.

C. Each of the elected members shall be residents of, have farming operations in, and be elected by sorghum producers within those areas of the state designated by this subsection as Districts 1 through 5. The districts shall be as follows:

1. District 1 shall consist of Cimarron County;

2. District 2 shall consist of Texas County;

3. District 3 shall consist of the counties of Beaver, Harper, Woods, Alfalfa, Ellis, Woodward, Major, Roger Mills, Custer, Dewey, Blaine, Kingfisher and Canadian;

4. District 4 shall consist of the counties of Grant, Kay, Osage, Washington, Nowata, Craig, Ottawa, Garfield, Nobel, Pawnee, Rogers, Mayes, Delaware, Logan, Payne, Creek, Tulsa, Wagoner, Cherokee, Adair, Oklahoma, Lincoln, Okfuskee, Okmulgee, Muskogee, Sequoyah and McIntosh; and

5. District 5 shall consist of the counties of Beckham, Washita, Caddo, Grady, Cleveland, Pottawatomie, Seminole, Hughes, Pittsburg, Haskell, Le Flore, Harmon, Greer, Kiowa, Comanche, Jackson, Tillman, Cotton, Stephens, Jefferson, McClain, Garvin, Murray, Carter, Love, Pontotoc, Johnston, Marshall, Coal, Atoka, Bryan, Latimer, Pushmataha, Choctaw and McCurtain.

D. 1. The terms of office of the initial elected Commission shall be as follows:

- a. two (2) years for District 1,
- b. three (3) years for Districts 2 and 4,
- c. four (4) years for District 3, and
- d. five (5) years for District 5.

Thereafter the term of office shall be for five (5) years.

2. If for any reason there is a vacancy on the Commission due to resignation, death, or for any cause resulting in an unexpired term, the Commission may name a provisional member to serve on the Commission for the remainder of the term of the office so vacated. The Commission shall submit, in writing, the name of such person to the President for approval. The President shall either approve or disapprove such person for appointment within thirty (30) days of the submission. The failure of the President to disapprove the person named as a member by the Commission shall be deemed to be approval and appointment of the member to the Commission.

E. The Commission shall hold meetings as necessary at a place and time to be fixed by the Commission. The Commission shall select, at its first meeting, a chair, a vice-chair and a secretary-treasurer. At the first meeting in each fiscal year thereafter, the chair, vice-chair, and secretary-treasurer for the ensuing year shall be elected. Special meetings may be called by the chair or by three members of the Commission by delivery of written notice to each member of the Commission. A majority of the Commission present at the meeting shall constitute a quorum of the Commission.

F. Commission members shall not receive any compensation but shall be reimbursed for all actual and necessary expenses incurred in the performance of its duties imposed upon the Commission pursuant to the Oklahoma Sorghum Resources Act in accordance with the provisions of the State Travel Reimbursement Act.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1850.4 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Except for the ex officio member, each member of the Oklahoma Sorghum Commission shall be elected by the sorghum producers in the district that the member represents. Each member will represent the district in which such member farms.

B. Any election of a member to the Commission shall be conducted pursuant to the procedures specified by this section.

C. 1. A sorghum producer who desires to be a candidate for the initial Commission shall file a petition signed by the potential candidate and at least ten sorghum producers in the district. The potential candidate shall also submit an application with the Department of Agriculture for the applicant's name to be placed on the ballot. The petition and application shall be submitted to the Commission for subsequent elections. The application must be:

- a. filed not later than thirty (30) days before the date set for the election, and
- b. on a form approved by the Department for the initial election and approved by the Commission thereafter.

2. Upon receipt of an application and verification that the application meets the requirements of this section, an applicant's name shall be placed on the ballot for election to the Commission.

3. The election shall be preceded by at least forty-five (45) days' notice published in one or more newspapers published and distributed in the established election districts. The notice shall be published not less than once a week for two (2) consecutive weeks. The public notice shall include the date, time and polling places for voting in the election and any other information deemed necessary by the Department to inform sorghum producers of the elections. In addition, two (2) weeks before the date of the election, written notice shall be provided to each county

agricultural extension agent in any county and assessment locations within the district in which the election is to be held.

D. 1. All sorghum producers in the district actively engaged in the production of sorghum in commercial quantities in the previous year of the calling of such election or who were actively engaged in production of sorghum in any two (2) of the three (3) years immediately preceding the calling of the election shall be entitled to vote in any such election. The Department shall determine any questions of eligibility to vote for the initial election. Thereafter, the Commission shall determine questions of eligibility to vote.

2. It shall be the responsibility of any sorghum producer to prove the producer's eligibility to vote.

3. Any producer who is eligible to vote at the election is eligible to be a Commissioner or a candidate for membership on the Commission.

4. An eligible sorghum producer may vote in any district in which the person produces sorghum.

E. Ballots in an election may be mailed to a central location or delivered in person to a location or locations designated by the Department for the initial elections and thereafter by the Commission.

F. 1. The Department shall bear all reasonable expenses incurred in conducting the election of the initial Commission. All such expenses shall be approved by the President prior to being incurred. Thereafter, any expenses incurred as a result of an election shall be borne by the Commission from any funds available to the Commission.

2. For the initial election, in order to ensure efficient and honest elections and efficient canvassing and reporting of returns, the President shall approve the form of the ballot, the conduct of the election, and the canvassing and reporting of returns.

Thereafter, the Commission shall prepare the ballot, the conduct of the election and the canvassing and reporting of returns.

G. 1. For the initial election, the Department shall prepare and distribute all necessary ballots in advance of the election.

Thereafter, the Commission shall prepare and distribute all necessary ballots in advance of the election.

2. The election ballot shall be printed only with the names of candidates who have filed valid petitions, but the ballot shall provide a space for write-in votes.

3. The ballot shall clearly define a bona fide producer of sorghum.

4. The ballot shall require the signature and place of residence of the sorghum producer.

5. All prepared ballots shall be mailed to a location designated by the Department for the initial election and by the Commission for elections held thereafter.

6. Rules promulgated by the Oklahoma State Board of Agriculture for the initial election, and by the Commission thereafter, shall be promulgated pursuant to Article I of the Administrative Procedures Act. The rules shall provide for:

- a. instructions to voters,
- b. conduct of elections,
- c. in-person absentee ballots or special write-in absentee ballots,
- d. balloting in-person locations and a central location for mail-in ballots,
- e. hours for voting,
- f. write-in votes for any eligible person whose name is not printed on the ballot, and
- g. such other information deemed necessary by the Commission.

H. 1. Ballots in all propositions and elections will be counted by a committee consisting of a representative of the Oklahoma Agricultural Extension Service, a representative of the Oklahoma Sorghum Commission, and a representative designated by the Oklahoma Department of Agriculture.

2. In all elections, results will be certified to the President for verification.

3. All ballots shall be locked in a container and stored in the county clerk's office in the county designated by the President. If no contests or investigations arise out of the election within thirty (30) days after the day of such election, the ballots may be destroyed by the office of the county clerk by shredding or burning after notification to the President and the Commission of the proposed destruction.

4. Any contest of the election or investigation shall be filed in district court in the area of the election within thirty (30) days after the day the ballots are counted.

5. In any case, if a recount is allowed by the district court, the court shall have the power to impound the locked ballot boxes and appoint a new canvassing committee consisting of three new directors from the same background as the original canvassing committee.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1850.5 of Title 2, unless there is created a duplication in numbering, reads as follows:

A member of the Oklahoma Sorghum Commission may be removed by the President of the State Board of Agriculture for cause or by a two-thirds (2/3) vote of the other members of the Commission. In addition to all other causes, a member ceasing to:

1. Be a resident of the state; or

2. Produce sorghum in the district from which such member was elected,

shall be deemed sufficient cause for removal from office.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1850.6 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Pursuant to the Oklahoma Sorghum Resources Act, the Commission shall have the power and duty to:

1. Elect Commission officers to provide leadership and organization;
2. Call and conduct such meetings as may be necessary in carrying out the provisions of the Oklahoma Sorghum Resources Act;
3. Formulate basic objectives and the general policies and programs of the State of Oklahoma respecting the discovery, promotion, and development of markets and industries for the utilization of sorghum;
4. Approve financial matters;
5. Maintain and enforce provisions of the Oklahoma Sorghum Resources Act;
6. Promulgate such rules as are necessary to promptly and effectively administer the provisions of the Oklahoma Sorghum Resources Act;
7. Conduct assessment referenda pursuant to Section 13 of this act;
8. Conduct programs consistent with the Oklahoma Sorghum Resources Act;
9. Develop bylaws for the due and orderly administration of the affairs of the Commission and for its responsibilities specified pursuant to the provisions of the Oklahoma Sorghum Resources Act;
10. Advise, consult and cooperate with agencies of this state and political subdivisions thereof, other states, the federal government and with affected groups;
11. Collect and disseminate information relating to sorghum production;

12. Contract with agencies of this state and political subdivisions thereof, other states, the federal government and other organizations or persons to comply and fulfill its mission pursuant to the provisions of the Oklahoma Sorghum Resources Act;

13. Hold public hearings for any purposes consistent with the provisions of the Oklahoma Sorghum Resources Act;

14. Identify and coordinate industry-wide programs for sorghum, sorghum resources, sorghum market development, sorghum promotion and education relating to sorghum;

15. Seek information from sorghum producers and users for purposes of planning and prioritizing expenditures of Commission funds;

16. Protect or represent the best interests of the industry; conduct production, utilization and policy research that affects the sorghum industry and benefits producers' profitability; disseminate reliable information; cooperate with agencies of this state and other states and governmental entities to implement joint programs; receive gifts and grants; and implement, or cause to be implemented, programs to increase the commercial value of Oklahoma sorghum; and

17. Take such other actions deemed necessary by the Commission to implement the provisions of the Oklahoma Sorghum Resources Act.

B. In addition, the Commission shall:

1. Make available for inspections during an annual independent audit each fiscal year by a competent accountant or auditor, all books, records of account and minutes of proceedings maintained by the Commission. The Commission shall provide to the State Department of Agriculture a copy of the annual audit performed pursuant to this section;

2. Not later than forty-five (45) days after the last day of the fiscal year, submit to the President of the State Board of Agriculture a report itemizing all income and expenditures and describing all activities of the Commission during the fiscal year;

3. Provide surety bonds in amounts determined by the Department of Central Services for any members who handle funds for the Commission; and

4. Receive, hold in trust, and disburse all assessments and other funds collected pursuant to the Oklahoma Sorghum Resources Act as trust funds of the Commission.

C. The Commission may use up to twenty-five percent (25%) of its funds to educate federal legislators and federal agencies about matters that may impact their sorghum production.

D. 1. Pursuant to the authority granted by the Oklahoma Sorghum Resources Act, except for instances of gross negligence, individual criminal actions or acts of dishonesty, the Commission and employees of the Commission are not individually liable to a sorghum producer or other person for:

- a. errors in judgment,
- b. mistakes, or
- c. omissions.

2. A member of the Commission is not individually liable for an act or omission of another member of the Commission.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1850.7 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Beginning ninety (90) days after the election of the initial Commission, there is hereby assessed a fee of one cent (\$0.01) per bushel upon all sorghum marketed by sorghum producers in this state and sold through commercial channels.

B. 1. The commercial channels at a commodity process point determined by the Commission shall collect the assessment. Except as provided by paragraph 2 of this subsection, the processor at that point shall collect the assessment by deducting the appropriate amount from the purchase price of the commodity or from any funds advanced for that purpose.

2. If the producer and processor are the same legal entity, or if the producer retains ownership after processing, the processor shall collect the assessment directly from the producer at the time of processing.

3. The Commission, by registered or certified mail, shall notify each processor of the duty to collect the assessment, the manner in which the assessment is to be collected, and the date on or after which the processor is to begin collecting the assessment.

4. The amount of the assessment collected shall be clearly shown on the sales invoice or other document evidencing the transaction. The processor shall furnish a copy of the document to the producer.

5. The Commission shall establish, by rule, the procedures for the collection and remittance of the assessment.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1850.8 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. The processor shall render and have on file a report with the Oklahoma Sorghum Commission on the date established by the Commission by rule.

B. In case any processor required to collect the assessment fails to make a report and remittance as required by the Oklahoma Sorghum Resources Act, the Commission shall determine the amount collected and owed by the processor, which shall be prima facie correct. Any processor having failed to make the report as required by the Oklahoma Sorghum Resources Act shall, within ten (10) days after notice of the computed collection amount established by the Commission is mailed to such processor, pay the computed collection amount, together with a penalty of five percent (5%) of the computed collection amount. The processor may dispute the computed collection amount as established by the Commission and request the Commission to hold a hearing to redetermine the amount of the

computed collection and the penalty to be imposed. No payment shall be made until the Commission enters its order determining the amount of such payment. The payment of the determined collection amount and penalty shall be paid within ten (10) days of notice of such decision.

C. At any time the Department may request an audit of the processor to determine whether the collection and proper disposition of the collected assessment were made pursuant to the provisions of the Oklahoma Sorghum Resources Act and rules promulgated thereto.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1850.9 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. The chairman of the Commission shall make an annual report to the Secretary of Agriculture, within forty-five (45) days after June 30 of each year, showing in detail all income and expenditures and any other facts relevant to the Oklahoma Sorghum Resources Act. Such annual report shall include a list of all officers and any employees of the Commission and shall indicate the official positions of such officers and any employees and salaries paid thereto.

B. The report shall be available to the public. A copy shall be sent upon request to any producer upon whom the assessment is assessed.

C. All records of the Commission shall be kept at least three (3) years.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1850.10 of Title 2, unless there is created a duplication in numbering, reads as follows:

Any person, firm or corporation subject to the assessment provided in Section 7 of this act that objects to the collection of the assessment may, within sixty (60) days following such collection, make application to the Commission for a refund of such

assessment. Upon receipt of the application for a refund, the Commission shall refund the amount of the assessment owed to the producer within thirty (30) days of the date the refund request was received. The producer shall submit the evidence of sorghum sold as required by the Commission.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1850.11 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created the Oklahoma Sorghum Resources Fund. The Oklahoma Sorghum Resources Fund shall be administered by the Oklahoma Sorghum Commission for the benefit of the sorghum producers in this state for the purposes specified by the Oklahoma Sorghum Resources Act. The Oklahoma Sorghum Resources Fund shall be established and maintained in a bank or other depository approved by the State Treasurer.

B. The Oklahoma Sorghum Resources Fund shall consist of:

1. All monies received by the Commission as proceeds from the assessment imposed pursuant to Section 7 of this act;

2. Interest attributable to investment of money in the Oklahoma Sorghum Resources Fund; and

3. Monies received by the Commission in the form of gifts, grants, reimbursements, or from any other source designated by law for deposit to the Oklahoma Sorghum Resources Fund.

C. Any costs incurred by the Commission pursuant to the provisions of the Oklahoma Sorghum Resources Act shall not exceed the actual collections of the Commission.

D. Monies in the Oklahoma Sorghum Resources Fund shall only be expended for:

1. Implementation and management of the Oklahoma Sorghum Resources Act; and

2. Costs incurred by the Commission and the State Board of Agriculture for the administration of the Oklahoma Sorghum Resources Act.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1850.12 of Title 2, unless there is created a duplication in numbering, reads as follows:

Upon the approval of the State Treasurer, any of the monies in the Oklahoma Sorghum Resources Fund may be invested by the Commission in securities of the state or federal government. The monies may also be deposited in certificates of deposit or in savings accounts or certificates of any bank, trust company or savings and loan association insured by a federal agency. These securities, certificates of deposit, savings accounts or savings certificates shall be placed in the care of the State Treasurer, who shall collect the principal and interest when due and pay both into the Oklahoma Sorghum Resources Fund.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1850.13 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Sorghum producers may petition for a referendum to determine if the assessment is to be continued, at any time after five (5) years following November 1, 1996. The President of the State Board of Agriculture shall call and conduct a referendum if the petitions bear signatures of ten percent (10%) of the sorghum producers. No more than one such referendum shall be conducted in any one thirty-six-month period. The State Department of Agriculture shall determine if the petition bears the required number of valid signatures. The President shall announce the referendum at least thirty (30) days prior to the day of voting. At least thirty (30) days before the referendum, the Department shall mail a notice of said referendum to all known sorghum producers in the State of Oklahoma who market sorghum in commercial quantities. The notice

shall specify the dates, times, and places for holding the referendum, and shall include a sample ballot with the following wording:

DO YOU FAVOR A CONTINUATION OF THE ONE CENT (\$0.01) PER BUSHEL ASSESSMENT ON SORGHUM MARKETED IN OKLAHOMA FOR UTILIZATION, RESEARCH, EDUCATION, PROMOTION AND MARKET DEVELOPMENT?

YES ()

NO ()

B. Places within each county for conducting said referendum shall be designated by the Commission, and voting in each county shall be supervised by the county agricultural extension agent, or person designated by the Department. The Commission shall ensure sufficient ballots and supplies necessary for the conduct of the voting and tabulation of returns. Certified results of the referendum in each district shall be transmitted within twenty-four (24) hours after voting ends to the President and the ballots shall be transmitted to the President within forty-eight (48) hours. Ballots shall be preserved by the President for a period of at least three (3) months.

C. 1. The results of the referendum shall be determined by the President, and the results certified to the Chairman of the Commission who shall issue a proclamation declaring the results.

2. The Commission shall bear expenses of advertising and conducting the referendum.

D. Whenever the question of levying the assessments is disapproved, by failure of sixty percent (60%) of the sorghum producers voting in the referendum to favor continuation of the assessments, the proclamation declaring the result shall provide for the termination of the assessments on April 30, following the date of said referendum.

SECTION 14. 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.

45-2-8034

KSM