STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 2401

By: Erwin, Smith (Dale), Stites and Culver of the House

and

Rabon of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to agriculture; establishing the Oklahoma Emu Promotion Act; defining terms; creating the Oklahoma Emu Promotion Council; providing for qualifications; providing for appointment; providing for terms and vacancies; setting term limits; providing for calling of first meeting; providing for reimbursement; providing for meetings and appointment of officers; authorizing removal of members; specifying purpose and duties; requiring bonding; specifying limits and purpose; requiring promulgation of rules; providing for audit by State Auditor and Inspector; requiring certain reports; prohibiting certain expenditures; providing liability; levying an assessment on slaughtered or processed emus; providing for payments; providing for collection; requiring certain reports; providing for penalties; providing for disputes; requiring maintenance of certain reports; providing for deposit of proceeds; requiring notice; requiring certain records;

specifying content; creating the Oklahoma Emu Promotion Fund; specifying contents of fund; specifying expenditures; providing for disbursements; providing procedures; authorizing investments; providing for duties and use of funds; prohibiting and restricting certain uses of funds; requiring assistance from certain state agencies; specifying certain purposes and duties; including within the term agricultural commodity, emus and certain emu products; 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 1600.1 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. This act shall be known and may be cited as the "Oklahoma Emu Promotion Act".

B. The purpose of the Oklahoma Emu Promotion Act shall be to develop programs that will enhance emu production, emu research, promoting market development and education and improving profitability of Oklahoma emu producers.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1600.2 of Title 2, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Emu Promotion Act:

1. "Commissioner" means the Commissioner of Agriculture;

2. "Council" means the Oklahoma Emu Promotion Council;

3. "Department" means the State Department of Agriculture;

4. "Emu processor" means a person who commercially slaughters and/or processes emus;

4. "Emu producer" or "producer" means an individual engaged in the feeding and maintaining of emus in Oklahoma.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1600.3 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 Emu Promotion Council.

B. 1. With the exception of the ex officio nonvoting member, the Council shall be composed of three (3) appointed members who:

a. are at least twenty-five (25) years of age and are residents of Oklahoma,

b. have been actually engaged in the production of emus in this state for a period of at least three (3) years, and

c. derive a substantial investment in the feeding and maintaining of emus.

2. The Commissioner of Agriculture shall be an ex officio nonvoting member of the Council. The Commissioner may appoint a designee to serve on the Council in the place of the Commissioner.

C. 1. The terms of office of the initially appointed Council shall be as follows:

1. One member shall be appointed by the Governor who shall serve an initial term of one (1) year;

2. One member shall be appointed by the President Pro Tempore of the Senate who shall serve an initial term of two (2) years; and

3. One member shall be appointed by the Speaker of the House of Representatives who shall serve an initial term of three (3) years.

D. After their initial terms of office, the appointees to the Oklahoma Emu Promotion Council shall be appointed for a term of two (2) years, and shall serve at the pleasure of their appointing

authority. All appointees shall be eligible for appointment, but in no case shall any appointee serve for more than six (6) years on the Council. Vacancies on the Council shall be filled in the same manner as the original appointment.

E. The Commissioner of Agriculture shall call the first meeting of the Council. At the first meeting and annually thereafter, the members of the Council shall elect a chairman, vice-chairman and secretary-treasurer from the membership of the Council, whose duties shall be those customarily exercised by such officers or specifically designated by the Council.

F. The Council shall hold meetings as necessary at a place and time to be fixed by the Council. Special meetings may be called by the chair or by two members of the Council by delivery of written notice to each member of the Council. Two members of the Council shall constitute a quorum.

G. Council members shall not receive any compensation but shall be reimbursed in accordance with the provisions of the State Travel Reimbursement Act for all actual and necessary expenses incurred in the performance of the duties imposed upon the Council pursuant to the Oklahoma Emu Promotion Act.

H. A member of the Oklahoma Emu Promotion Council may be removed by the State Board of Agriculture for cause or by a two-thirds (2/3) vote of the other members of the Council.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1600.4 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Pursuant to the Oklahoma Emu Promotion Act, the Oklahoma Emu Promotion Council shall have the power and duty to:

1. Elect Council officers to provide leadership and organization;

2. Call and conduct such meetings as may be necessary in carrying out the provisions of the Oklahoma Emu Promotion 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 emus;

4. Approve financial matters;

5. Maintain and enforce provisions of the Oklahoma Emu Promotion Act;

6. Promulgate rules as are necessary to promptly and effectively administer the provisions of the Oklahoma Emu Promotion Act;

7. Conduct programs consistent with the Oklahoma Emu Promotion Act;

8. Develop bylaws for the due and orderly administration of the affairs of the Council and for its responsibilities specified pursuant to the provisions of the Oklahoma Emu Promotion Act;

9. Advise, consult and cooperate with agencies of this state and political subdivisions thereof, other states, the federal government and with affected groups;

10. Collect and disseminate information relating to emu production;

11. 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 Emu Promotion Act;

12. Hold public hearings for any purposes consistent with the provisions of the Oklahoma Emu Promotion Act;

13. Identify and coordinate industry-wide programs for emu, emu resources, emu market development, emu promotion and education relating to emus;

14. Seek information from emu producers and users for purposes of planning and prioritizing expenditures of Council funds;

15. Protect or represent the best interests of the industry; conduct production, utilization and policy research that affects the emu 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 emus; and

16. Take such other actions deemed necessary by the Council to implement the provisions of the Oklahoma Emu Promotion Act.

B. In addition, the Council shall:

1. Make available for inspections during an annual independent audit each fiscal year by the State Auditor and Inspector, all books, records of account and minutes of proceedings maintained by the Council. The Council 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 Commissioner of Agriculture a report itemizing all income and expenditures and describing all activities of the Council 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 Council; and

4. Receive, hold in trust and disburse all assessments and other funds collected pursuant to the Oklahoma Emu Promotion Act as trust funds of the Council.

C. Any funds received by the Council pursuant to the provisions of the Oklahoma Emu Promotion Act shall not be used, directly or indirectly, or as a result of contract or agreement, with other persons or organizations in supporting or opposing political candidates or political office holders, either state or national.

D. 1. Except for instances of gross negligence, individual criminal actions or acts of dishonesty, the Council is not individually liable to an emu producer or other person for actions or omissions taken pursuant to this act which are:

a. errors in judgment, or

b. mistakes.

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

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1600.5 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Beginning January 1, 1999, there is hereby assessed a fee of not to exceed Three Dollars ($3.00) per emu slaughtered or processed within this state by an emu processor. The fee shall be assessed and imposed upon the emu producer at the time of delivery for slaughter or processing to the emu processor and shall be collected and remitted by the emu processor to the Oklahoma Emu Promotion Council. Pursuant to the provisions of the Oklahoma Emu Promotion Act, no emu shall be subject to assessment of a fee more than once.

B. 1. The State Department of Agriculture, by registered or certified mail, shall notify each emu 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 emu processor is to begin collecting the assessment.

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

3. The Council shall establish, by rule, the procedures for the collection and remittance of the assessment.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1600.6 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. The emu processor shall render and have on file a report along with remittance of the fees collected pursuant to the Oklahoma Emu Promotion Act on the fifteenth day of each calendar quarter. The report shall include the total amount of fees assessed by the emu processor, the total amount of emus slaughtered and/or processed and such other information as may be required by the Oklahoma Emu Promotion Council.

B. 1. If the emu processor fails to make a report and remittance as required by the Oklahoma Emu Promotion Act, the Council shall determine the amount collected and owed by the emu processor, which shall be prima facie correct.

2. Any emu processor having failed to make the report as required by the Oklahoma Emu Promotion Act shall, within ten (10) days after notice of the computed collection amount established by the Council is mailed to such emu processor, pay the computed collection amount, together with a penalty of five percent (5%) of the computed collection amount.

3. The emu processor may dispute the computed collection amount established by the Council and request the Council 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 Council 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 State Department of Agriculture may request an audit of the emu processor to determine whether the collection and proper disposition of the collected assessment were made pursuant to the provisions of the Oklahoma Emu Promotion Act and rules promulgated thereto.

D. The emu processor shall retain any records or reports relating to the collection of the assessment for at least three (3) years.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1600.7 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Emu Promotion Council shall make an annual report to the Commissioner 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 Emu Promotion Act. Such annual report shall include a list of all officers and any employees of the Council 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 Council shall be kept at least three (3) years.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1600.8 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created the Oklahoma Emu Promotion Fund. The Oklahoma Emu Promotion Fund shall be administered by the Oklahoma Emu Promotion Council for the benefit of the emu producers in this state for the purposes specified by the Oklahoma Emu Promotion Act. The Oklahoma Emu Promotion Fund shall be established and maintained in a bank or other depository as approved by the Council and the State Department of Agriculture.

B. The Oklahoma Emu Promotion Fund shall consist of:

1. All monies received by the Council as proceeds from the assessment imposed pursuant to Section 5 of this act;

2. Interest attributable to investment of money in the Oklahoma Emu Promotion Fund; and

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

C. Any costs incurred by the Council pursuant to the provisions of the Oklahoma Emu Promotion Act shall not exceed the actual collections of the Council.

D. Monies in the Oklahoma Emu Promotion Fund shall only be expended for:

1. Implementation and management of the Oklahoma Emu Promotion Act; and

2. Costs incurred by the Council and the State Board of Agriculture for the administration of the Oklahoma Emu Promotion Act.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1600.9 of Title 2, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Tax Commission shall provide any information necessary to assist the Oklahoma Emu Promotion Act in collecting the assessments provided for in this act.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1600.10 of Title 2, unless there is created a duplication in numbering, reads as follows:

Whenever the term "agricultural commodity" occurs in the Oklahoma Statutes, such term shall also include emus and marketable products derived from emus.

SECTION 11. This act shall become effective November 1, 1998.

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