

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

HOUSE BILL NO. 1344

By: Begley

AS INTRODUCED

An Act relating to agriculture; creating the Oklahoma Sorghum Resources Act; specifying purpose; 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 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 annual report; providing for certain refunds; creating the Oklahoma Sorghum Resources Fund; allowing certain investments; providing for a referendum and procedures thereto; 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:

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

B. The purpose of the Oklahoma Sorghum Resources Act shall be to develop programs that will enhance sorghum production, sorghum research, promote market development and education, and improve profitability of Oklahoma Sorghum Producers.

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. "First purchaser" is any person, public or private corporation, association, or partnership buying or otherwise acquiring after harvest the property in or to sorghum from a sorghum producer. A mortgagee, pledgee, lienor, or other person, public or private, having a claim against the sorghum producer under a nonrecourse loan made against the sorghum after harvest thereof

shall be deemed a purchaser hereunder. The term "first purchaser" shall not include a harvesting or threshing lienee;

6. "Fiscal year" means the sorghum accounting year beginning July 1 of each year and ending June 30th of the following year;

7. "President" means the President of the State Board of Agriculture;

8 "Sorghum processor" means a person who commercially manufactures products made from grain sorghum or animal feed; and

9. "Sorghum producer" or "producer" means an individual engaged in the production of sorghum, who markets sorghum in commercial quantities in Oklahoma. Each individual determined to be an entity pursuant to rules promulgated by the United States Department of Agriculture Consolidated Farmer Service Agency shall be considered as a sorghum producer.

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 are 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 a resident of, have a farming operation in, and be elected by sorghum producers within a district area designated by this subsection as District 1 through District 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. An elected member of the Commission may only serve for two terms.

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 person to serve as a provisional member of 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 the named person as a provisional member of the Commission within thirty (30) days of the submission of the name by the Commission. The failure of the President to disapprove the person named as the provisional member of the Commission within the thirty-day period shall be deemed approval of the person as the provisional member of the Commission.

E. The Commission shall hold meetings as necessary at a place and time to be fixed by the Commission. The Commission shall elect, at the initial meeting of the Commission, 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. Three members of the Commission shall constitute a quorum.

F. Commission 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 Commission pursuant to the Oklahoma Sorghum Resources Act.

G. 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 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. 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 rules as are necessary to promptly and effectively administer the provisions of the Oklahoma Sorghum Resources Act;
7. Conduct assessment referenda pursuant to Section 12 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. Any funds received by the Commission pursuant to the provisions of the Oklahoma Sorghum Resources 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. 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 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. 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 resides and produces sorghum.

B. Any election of a member to the Commission shall be conducted pursuant to the procedures specified by the Oklahoma Sorghum Resources Act and by rules promulgated pursuant thereto.

C. 1. A sorghum producer who desires to be a candidate for the Commission shall file a petition signed by the potential candidate and at least ten sorghum producers in the district with the Department of Agriculture for the initial election and with the Commission for subsequent elections. Along with the petition, the potential candidate shall submit an application for the applicant's name to be placed on the ballot. 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 a forty-five-day 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, polling places for voting in the election, and any other information deemed necessary by the Department for the initial election and deemed necessary by the Commission thereafter to inform sorghum producers of the election. In addition, two (2) weeks before the date of the election, written notice shall be provided to each county agent of the cooperative extension service and each assessment location within the district in which the election is to be held.

D. 1. Each sorghum producer in the district who is actively engaged in the production of sorghum in commercial quantities in the current fiscal year of the calling of the election shall be entitled

to vote in such election. The Department shall determine any questions of eligibility to vote in the initial election.

Thereafter, the Commission shall determine questions of eligibility to vote. Proof of voter eligibility shall include, but not be limited to, a dated grain elevator receipt which includes the sorghum producer's name and address and the amount of sorghum sold.

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

3. Each eligible sorghum producer is authorized to cast one vote per candidate in any district in which the person produces sorghum.

E. 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.

F. 1. For the initial election, the President shall approve the form of the ballot, and thereafter the Commission shall prepare the ballot.

2. Ballots shall be prepared and distributed in advance of the election.

3. The election ballot shall be printed with the names of candidates who have filed valid petitions and applications pursuant to this section. In addition, the ballot shall provide a space for write-in candidates.

4. Each ballot shall clearly state any voter eligibility requirements.

5. The ballot shall require the signature and place of residence of the sorghum producer voting in the election.

6. All prepared ballots shall be mailed or delivered in person to a location or locations designated by the Department for the

initial election and by the Commission for elections held thereafter.

7. 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 include, but not be limited to:

- 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,
- g. canvassing and reporting of returns, and
- h. such other information deemed necessary by the Commission.

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

2. The candidate receiving the majority of all votes cast in the district election shall be deemed to have been elected to office.

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

4. 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.

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

6. 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 representatives from the same background as the original canvassing committee.

H. 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. 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 or handled through commercial channels. The fee shall be assessed and imposed upon the sorghum producer at the time of sale or delivery and shall be collected and remitted by the first purchaser to the Commission. Pursuant to the provisions of this act, no sorghum shall be subject to assessment of a fee more than once.

B. 1. The first purchaser shall collect the assessment by deducting the appropriate amount from the purchase price of the sorghum or from any funds advanced for that purpose.

2. The Commission, by registered or certified mail, shall notify each first purchaser 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 first purchaser is to begin collecting the assessment.

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

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

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. The first purchaser shall file a report along with remittance of the fees collected pursuant to the Oklahoma Sorghum Resources Act on the date established by the Commission by rule. The report shall include the total amount of fees assessed by the first producer, the total amount of sorghum purchased, and such other information required by the Commission.

B. If the first purchaser 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 first purchaser, which shall be prima facie correct. Any first purchaser 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 first purchaser, pay the computed collection amount, together with a penalty of five percent (5%) of the computed

collection amount. The first purchaser may dispute the computed collection amount 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 State Department of Agriculture may request an audit of the first purchaser 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.

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

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 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 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. Any sorghum producer subject to the assessment provided in Section 6 of this act may request a refund of the fees so assessed, within sixty (60) days following the collection of the fee. Any sorghum producer requesting a refund shall make application to the Commission for the refund of such assessment. Along with the application, the sorghum producer shall submit the evidence of payment of the fee and of the amount of sorghum sold required by the Commission. The Commission may verify the accuracy of the request for the refund.

B. If the total amount of fees to be refunded to a sorghum producer is less than Twenty Dollars (\$20.00), the Commission may retain the fees until the cumulative total amount of fees to be refunded to a sorghum producer totals One Hundred Dollars (\$100.00) or more; provided, any requested refund of fees shall not be retained by the Commission over two (2) years.

C. Except as otherwise provided by subsection B of this section, upon receipt of the application for a refund and evidence required, 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.

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:

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 6 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 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:

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 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:

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, 1997. 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 shall be 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 13. 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.

46-1-5263

KSM