

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

HOUSE BILL HB1225

By: Leist

AS INTRODUCED

An Act relating to agriculture; creating the Oklahoma Ethanol Development and Marketing Act; providing legislative intent; setting Oklahoma policy; defining terms; creating the Oklahoma Ethanol Board; providing for qualifications, membership, appointment and terms of office; providing for vacancies and removal; providing for meetings, procedures and reimbursements; providing for election of officers; providing for powers and duties; requiring confidentiality of certain information; creating the State Ethanol Board Revolving Fund and the Agricultural Alcohol Fuel Assessment Fund; providing for deposits, uses and expenditures; prohibiting certain uses; requiring payment of an assessment; setting assessment; providing procedures; providing for calculations; providing for collections and use; authorizing tax credits for certain facilities; setting tax credits; providing procedures; setting certain limitations; providing for applications; 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 1950.1 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 Ethanol Development and Marketing Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1950.2 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. The Legislature finds that Oklahoma should encourage the processing, market development, promotion, distribution, and

research on products derived from grain, ethanol, or ethanol components, coproducts, or byproducts to provide for:

1. Expanded use of Oklahoma agricultural products;

2. Efficient and less-polluting energy sources and reserves which will make Oklahoma less energy dependent, reduce atmospheric carbon monoxide levels, and retain Oklahoma dollars in the Oklahoma economy to achieve a multiplier effect thereby generating additional jobs and tax income to the state rather than the export of Oklahoma dollars;

3. Development of protein which will be more efficiently stored and marketed to foreign nations rather than the present method of simple export of unprocessed grain products;

4. Alternative local outlets for Oklahoma agricultural products which can be particularly utilized in times of depressed grain prices so as to give Oklahomans greater control of their crop marketing procedures rather than have crop marketing procedures too dependent upon federal agencies, major grain exporters, and foreign purchasers. Local outlets may include ethanol plants, agricultural production facilities, or facilities related to the processing, marketing, or distribution of ethanol or products derived from ethanol or ethanol components, coproducts, or byproducts;

5. Cooperation with private industry to establish ethanol-related production facilities in Oklahoma to create demand for agricultural products;

6. Promotion and market development, in cooperation with private industry, of ethanol or products derived from ethanol or ethanol components, coproducts, or byproducts; and

7. Sponsorship of research and development of industrial and commercial uses for agricultural ethanol and for byproducts resulting from the manufacturing of agricultural ethanol in order to enhance economic feasibility and marketing potential of such products and processes.

B. 1. It is hereby declared to be the public policy of this state that, in order to safeguard life, health, property, and public welfare of its citizens, the production, sale, and use of motor fuel and the pollution caused by certain components of motor fuel are matters affecting the public interest and that a statewide emphasis on the production and use of motor fuel containing agricultural ethyl alcohol as a substitute for polluting components is necessary for the reduction of pollution and will further serve as an incentive for the agricultural economy in this state.

2. The Legislature further recognizes that a fuel crisis is pending in the nation and that the development of an additional source of fuel will provide an energy and environmental benefit to the citizens of this state and the future economic growth of Oklahoma.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1950.3 of Title 2, unless there is created a duplication in numbering, reads as follows:

For purposes of the Oklahoma Ethanol Development and Marketing Act:

1. "Agricultural production facility" or "ethanol facility" means a plant or facility related to the processing, marketing, or distribution of any products derived from grain components, coproducts, or byproducts;

2. "Board" means the Oklahoma Ethanol Board;

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

4. "Delivered" or "delivery" means receiving grain for any use other than storage;

5. "First purchaser" means any person, public or private corporation, association, partnership, or limited liability company

buying, accepting for shipment, or otherwise acquiring grain in Oklahoma, and includes a mortgagee, pledgee, lienor, or other person, public or private, having a claim against the grower, when the actual or constructive possession of the grain is taken as part payment or in satisfaction of such mortgage, pledge, lien, or claim;

6. "Grain" means wheat, corn, and/or grain sorghum;

7. "Grower" means any landowner personally engaged in growing grain, a tenant of the landowner personally engaged in growing grain, and both the owner and tenant jointly and includes a person, partnership, limited liability company, association, corporation, cooperative, trust, sharecropper, and other business unit, device, and arrangement;

8. "Name plate design capacity" means the original designed capacity of an agricultural production facility. Capacity may be specified as bushels of grain ground or gallons of ethanol produced per year; and

9. "Sale" includes any pledge or mortgage of grain after harvest to any person, public or private.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1950.4 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. 1. There is hereby created the Oklahoma Ethanol Board. The Board shall consist of eleven (11) members to be appointed by the Governor. The Governor shall make the initial appointments within thirty (30) days after September 1, 2001. Five members shall be actually engaged in farming in this state, two of the farming members shall be in general farming and one each of the farming members shall be in the production of corn, wheat, and sorghum; One member shall be actively engaged in the trade and marketing business in this state. One member shall represent labor interests in this state. Four members shall represent Oklahoma petroleum marketers in this state.

2. Members shall be appointed for terms of four (4) years, except that of the initial appointees the terms of the two members engaged in general farming shall expire on August 31, 2002, the terms of the member engaged in sorghum production and the member engaged in wheat production shall expire on August 31, 2003, the term of the members representing petroleum marketers and the term of the member representing labor interests shall expire on August 31, 2004, and the terms of the member engaged in trade and marketing business and the members engaged in corn production shall expire on August 31, 2005. A member shall serve until a successor is appointed and qualified.

3. A vacancy on the Board shall exist in the event of death, disability, resignation, or removal for cause of a member. Any vacancy on the Board arising other than from the expiration of a term shall be filled by appointment for the unexpired portion of the term. An appointment to fill a vacancy shall be made by the Governor, and any person so appointed shall have the same qualifications as the person who is succeeded. Members may be removed from office by a majority vote of the three appointing authorities in a manner as provided by law.

4. The Board shall at its first meeting elect one of its members as chairperson, who shall preside over meetings of the Board and perform such other duties as may be required by the Board. The first meeting of the Board shall be called by the Governor.

5. Six members shall constitute a quorum of the Board.

6. No member of the Board shall receive a salary for duties performed as a member of the Board however, members are eligible to receive reimbursement for expenses and travel reimbursement as provided for in the State Travel Reimbursement Act.

B. The Board shall have the power and duty to:

1. Administer and enforce the provisions of the Oklahoma Ethanol Development and Marketing Act;

2. Establish an office for the Board within the State of Oklahoma;

3. Elect a chairperson and whatever other officers may be necessary to direct operations of the Board;

4. Employ personnel as shall be deemed necessary to carry out the purpose and provisions of the Oklahoma Ethanol Development and Marketing Act including but not limited to an attorney to provide legal assistance to the Board, and to prescribe their duties and fix their compensation;

5. Establish and administer the Agricultural Alcohol Fuel Assessment Fund and the Oklahoma Ethanol Board Revolving Fund;

6. Approve or disapprove the budget of the Board;

7. Promulgate rules as it deems necessary to carry out the provisions of the Ethanol Development and Marketing Act;

8. Enter into contracts or agreements for studies, research projects, experimental work, supplies or other services to carry out the purposes of the Oklahoma Ethanol Development and Marketing Act, and incur those expenses necessary to carry out said purposes. Any such contract or agreement shall provide that:

a. the person entering the contract or agreement on behalf of the Board shall develop and submit to the Board a plan or project together with a budget or budgets that shows estimated costs to be incurred for the plan or project,

b. the person entering the contract or agreement shall keep accurate records of all of its transactions, account for funds received and expended, and make periodic reports to the Board of activities conducted, and such other reports as the Board may require;

9. Keep accurate records of all financial transactions performed pursuant to the Oklahoma Ethanol Development and Marketing Act. These records shall be audited annually by an independent

auditor and an annual report shall be compiled and presented to the Governor;

10. Cooperate with any private, local, state or national commission, organization, agency or group and to make contracts and agreements for joint programs beneficial to the ethanol industry;

11. Accept donations, grants, contributions and gifts from any public or private source and deposit such in the Oklahoma Ethanol Board Revolving Fund;

12. Approve or disapprove the investment of any monies in the Oklahoma Ethanol Board Revolving Fund and the Agricultural Alcohol Fuel Assessment Fund pursuant to the Oklahoma Ethanol Development and Marketing Act;

13. Keep an accurate record of all assessments collected;

14. Employ an administrator;

15. Compile a biennial report setting forth the activities, contracts and projects of the Board and the amount of funds expended;

16. Expend funds necessary to otherwise carry out the Board's duties under the Oklahoma Ethanol Development and Marketing Act;

17. Appoint an advisory committee of four persons, one representing each of the following: The Department of Commerce, Oklahoma State University, the Department of Agriculture, and the Oklahoma Energy Resources Board;

18. Appropriate funds and become a member of any national ethanol promotion group;

19. Accept commodities in connection with Section 1024 of the federal Food Security Act of 1985 or in connection with any other section of state or federal law;

20. Assist and contract with local, state and federal agencies to promote air quality improvement programs or other programs related to and affecting the responsibilities of the Board; and

21. Otherwise implement the Oklahoma Ethanol Development and Marketing Act.

C. There shall be an annual meeting of the Board at which the annual report and proposed budget will be presented. The Board shall, at the call of the chairperson, hold at least three other regular meetings each year. The chair shall establish the time, a manner and place of all meetings and shall provide notice of such meetings. The Board shall determine the circumstances under which additional meetings of the Board may be held.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1950.5 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Trade secrets, academic and scientific research work, and other proprietary or commercial information which may be filed with the Oklahoma Ethanol Board for any purpose shall not be considered to be public records if the release of such trade secrets, work, or information would give advantage to business competitors and serve no public purpose.

B. Any person seeking release of the trade secrets, work, or information as a public record shall demonstrate to the satisfaction of the Board that the release would not violate this section.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1950.6 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. 1. There is hereby created in the State Treasury for the Oklahoma Ethanol Board a revolving fund to be designated the State Ethanol Board Revolving Fund. The fund shall be a continuing fund not subject to fiscal year limitations and shall consist of all costs incurred from administering the Agricultural Alcohol Fuel Assessment Fund collected pursuant to the Oklahoma Ethanol Development and Marketing Act and fees, penalties and any other funds obtained or received by the Board pursuant to the Oklahoma

Ethanol Development and Marketing Act except for the assessment levied pursuant to the Oklahoma Ethanol Development and Marketing Act.

2. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and shall be expended by the Board for the purposes of implementing, administering and enforcing the Oklahoma Ethanol Development and Marketing Act. Expenditures from the fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

B. All expenses, per diem, salaries, wages, travel, rents, printing, supplies, maintenance, and other costs incurred by the Board in the performance of its duty and in accomplishment and fulfillment of the purposes of the Oklahoma Ethanol Development and Marketing Act shall be a proper charge against and paid from the State Ethanol Board Revolving Fund. In no event shall any claim or obligation accrue against the State of Oklahoma nor against the State Ethanol Board Revolving Fund in excess of the monies collected and paid into the State Treasury pursuant to the provisions of the Oklahoma Ethanol Development and Marketing Act.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1950.7 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created the Agricultural Alcohol Fuel Assessment Fund. The Fund shall be administered by the Oklahoma Ethanol Board.

B. The assessment levied pursuant to the Oklahoma Ethanol Development and Marketing Act shall be deposited and may be expended by the Board for the following purposes:

1. Establishment, with cooperation of private industry, of procedures and processes necessary to the manufacture and marketing of fuel containing agricultural ethyl alcohol;

2. Establishment of procedures for entering blended fuel into the marketplace by private enterprise;

3. Analysis of the marketing process and testing of marketing procedures to assure acceptance in the private marketplace of blended fuel and byproducts resulting from the manufacturing process;

4. Cooperation with private industry to establish privately owned agricultural ethyl alcohol manufacturing plants in Oklahoma to supply demand for blended fuel;

5. Sponsoring research and development of industrial and commercial uses for agricultural ethyl alcohol and for byproducts resulting from the manufacturing process;

6. Promotion of state and national air quality improvement programs in cooperation with the Department of Environmental Quality and influencing federal legislation that requires or encourages the use of fuels oxygenated by the inclusion of agricultural ethyl alcohol or its derivatives;

7. Promotion of the use of renewable agricultural ethyl alcohol as a partial replacement for imported oil and for the energy and economic security of the nation;

8. Participation in development and passage of national legislation dealing with research, development, and promotion of United States production of fuels oxygenated by the inclusion of agricultural ethyl alcohol or its derivatives, access to potential markets, tax incentives, imports of foreign-produced fuel, and related concerns that may develop in the future; and

9. As the board may otherwise direct to fulfill the goals set forth under the Oklahoma Ethanol Development and Marketing Act.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1950.8 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. An assessment is levied upon grain sold through commercial channels in Oklahoma or delivered into Oklahoma. For any sale or delivery of grain occurring on or after July 1, 2001, and before January 1, 2005, the assessment is three-fourths cent (\$0.0075) per bushel for corn and three-fourths cent (\$0.0075) per hundredweight for wheat and for grain sorghum. For any sale or delivery of grain occurring on or after January 1, 2005, and before January 1, 2010, the assessment is one-half cent (\$0.005) per bushel for corn and one-half cent (\$0.005) per hundredweight for wheat and for grain sorghum.

B. The assessment shall be imposed at the time of sale or delivery and shall be collected by the first purchaser. The assessment shall be collected, administered, and enforced in conjunction with the fees imposed pursuant to the Oklahoma Ethanol Development and Marketing Act. The assessment shall be collected, administered, and enforced by the Board. No grain shall be subject to the assessment imposed by this section more than once.

C. 1. In the case of a pledge or mortgage of grain as security for a loan under a federal price support program, the assessment shall be deducted from the proceeds of such loan at the time the loan is made. If, within the life of the loan plus thirty (30) days after the collection of the assessment for grain that is mortgaged as security for a loan under the federal price support program, the grower of the grain so mortgaged decides to purchase the grain and use it as feed, the grower shall be entitled to a refund of the assessment previously paid.

2. The refund shall be payable by the Board upon the grower's written application for a refund. The application shall have attached proof of the assessment deducted.

3. The assessment shall be deducted whether the grain is stored in this or any other state.

D. The assessment shall not apply to the sale of grain to the federal government for ultimate use or consumption by the people of the United States when the State of Oklahoma is prohibited from imposing such assessment by the Constitution of the United States and laws enacted pursuant thereto.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1950.9 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. The first purchaser, at the time of sale or delivery, shall retain the assessment as provided in Section 8 of this act and shall maintain the necessary records of the assessment for each sale or delivery of grain. Records maintained by the first purchaser shall provide:

1. The name and address of the seller or deliverer;
2. The date of the sale or delivery;
3. The number of bushels of corn or hundredweights of wheat or grain sorghum sold or delivered; and
4. The amount of assessment retained on each sale or delivery.

The records shall be open for inspection and audit by authorized representatives of the Oklahoma Ethanol Board during normal business hours observed by the first purchaser.

B. The first purchaser shall render and have on file with the Board by the last day of each January, April, July and October on forms prescribed by the Board a statement of the number of bushels of corn and hundredweights of wheat and grain sorghum sold or delivered in Oklahoma. At the time the statement is filed, the first purchaser shall pay and remit the assessment to the Board.

C. The Board shall remit the assessment collected to the State Treasurer for credit to the Agricultural Alcohol Fuel Assessment Fund within thirty (30) days after the end of each quarter.

D. For each fiscal year beginning with fiscal year 2002-2003 through fiscal year 2004-2005, the Board shall calculate its

costs in collecting and enforcing the assessment imposed by Section 8 of this act and shall be reimbursed from the Agricultural Alcohol Fuel Assessment Fund.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1950.10 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Any ethanol facility which is in production at the rate of at least twenty-five percent (25%) of its name plate design capacity for the production of ethanol, before denaturing, on or before December 31, 2004, shall receive a tax credit of twenty cents (\$0.20) per gallon of ethanol produced for sixty (60) months beginning with the first month for which it is eligible to receive such credit and ending not later than December 31, 2010, if the ethanol facility maintains an average production rate of at least twenty-five percent (25%) of its name plate design capacity for at least six (6) months after the first month for which it is eligible to receive such credit.

B. Any ethanol facility eligible for a tax credit under this subsection shall also receive a credit of twenty cents (\$0.20) per gallon of ethanol produced in excess of the original name plate design capacity which results from expansion of the facility completed on or before December 31, 2004. Such tax credit shall be for sixty (60) months beginning with the first month for which production from the expanded facility is eligible to receive such tax credit and ending not later than December 31, 2010.

C. 1. Beginning June 1, 2010, an ethanol facility shall receive a credit of seven and one-half cents (\$0.075) per gallon of ethanol, before denaturing, for new production for a period not to exceed thirty-six (36) consecutive months.

2. For purposes of this subsection, new production means production which results from a new facility, a facility which has not received credits prior to June 1, 2010, or the expansion of an

existing facility's capacity by at least two million (2,000,000) gallons first placed into service after June 1, 2010, as certified by the facility's design engineer to the Oklahoma Tax Commission.

3. For expansion of an existing facility's capacity, new production means production in excess of the average of the highest three (3) months of ethanol production at an ethanol facility during the twenty-four-month period immediately preceding certification of the facility by the design engineer.

4. No credits shall be allowed under this subsection for expansion of an existing facility's capacity until production is in excess of twelve times the three-month average amount determined under this subsection during any twelve-consecutive-month period beginning no sooner than June 1, 2010.

5. New production shall be approved by the Oklahoma Tax Commission based on such ethanol production records as may be necessary to reasonably determine new production.

D. 1. The credits described in this section shall be given only for ethanol produced at a plant in Oklahoma at which all fermentation, distillation, and dehydration takes place. No credit shall be given on ethanol produced for or sold for use in the production of distilled spirits.

2. Not more than twenty-five million (25,000,000) gallons of ethanol produced annually at an ethanol facility shall be eligible for the credits in subsections A and B of this section, and the credits may only be claimed by a producer for the periods specified in subsections A and B of this section.

3. Not more than ten million (10,000,000) gallons of ethanol produced during any twelve-consecutive-month period at an ethanol facility shall be eligible for the credit described in subsection C of this section, and the credit may only be claimed by a producer for the periods specified in subsection C of this section.

4. Not more than one hundred twenty-five million (125,000,000) gallons of ethanol produced at an ethanol facility by the end of the sixty-month period set forth in subsection A or B of this section shall be eligible for the credit under such subsection. An ethanol facility which receives a credit for ethanol produced under subsection A or B of this section shall not receive a credit under subsection C of this section until its eligibility to receive a credit under subsection A or B has been completed.

E. The Oklahoma Tax Commission shall prescribe an application form and procedures for claiming credits under this section.

F. For purposes of ascertaining the correctness of any application for claiming a credit provided in this section, the Oklahoma Tax Commission may examine or cause to have examined, by any agent or representative designated by him or her for that purpose, any books, papers, records, or memoranda bearing upon such matters.

SECTION 11. 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.

48-1-5111            KSM            6/12/15