

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

HOUSE BILL HB2578:

Newport

AS INTRODUCED

An Act relating to agriculture; creating the Oklahoma Poultry Waste Transfer and Utilization Incentive Act; amending 2 O.S. 2001, Sections 10-9.13, 10-9.14 and 10-9.15, which relate to poultry waste utilization; modifying and amending purposes; defining terms; making an assessment; providing for remittance and reports; providing for contents; requiring records; providing penalty; requiring accounting; modifying the Poultry Waste Transfer and Utilization Incentive Fund; providing for composition; providing for expenditures and deposits; providing for apportionments and allotments; requiring application; requiring certain information; providing for compensation; providing for determination of rates; providing for promulgation of rules; requiring report; requiring audits; providing for codification; providing effective dates; and declaring an emergency.

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

SECTION 1. AMENDATORY 2 O.S. 2001, Section 10-9.13, is amended to read as follows:

Section 10-9.13 A. Sections ~~13~~ 1 through ~~15~~ 12 of this act shall be known and may be cited as the "Oklahoma Poultry Waste Transfer and Utilization Incentive Act".

B. The purpose of ~~this act~~ the Oklahoma Poultry Waste Transfer and Utilization Incentive Act shall be to encourage the utilization of poultry waste, the market development for poultry waste, the establishment for any necessary distribution centers or storage facilities and the safe and cost-effective transfer of poultry waste out of designated nutrient-limited watersheds and nutrient-vulnerable groundwater as designated in the most recent Oklahoma's Water Quality Standards.

~~B.~~ C. The ~~State~~ Oklahoma Department of Agriculture, Food, and Forestry shall develop a plan to encourage the market development and the safe and cost-effective utilization and transfer of poultry waste out of designated nutrient-limited watersheds and nutrient-vulnerable groundwater as designated by the most recent Oklahoma's Water Quality Standards.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 10-9.13-1 of Title 2, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Poultry Waste Transfer and Utilization Incentive Act:

1. "Board" means the State Board of Agriculture;
2. "Contract growing arrangement" means any growout contract, marketing agreement, or other arrangement with an integrator or poultry processing facility under which a contract poultry feeding operation cares for or raises poultry, in accord with instructions issued by the integrator or poultry processing facility;
3. "Contract poultry grower" means any person who owns and operates a poultry feeding operation, pursuant to a contract growing arrangement, whether the poultry is owned by such person, by an integrator or by a poultry processing facility;
4. "Department" means the Oklahoma Department of Agriculture, Food, and Forestry;
5. "Integrator" means an individual, partnership, corporation or other legal entity engaged in the business of obtaining poultry from a poultry feeding operation through the provisions of a contract growing arrangement;
6. "Independent poultry grower" means any person, partnership, corporation or other legal entity owning and operating a poultry feeding operation not subject to a contract growing arrangement;
7. "Poultry" means chickens, turkeys, ducks, geese or other fowl;

8. "Poultry processing facility" means a facility which slaughters, cans, stuffs, renders, bones, cuts up or otherwise manufactures or processes poultry carcasses in whole or in part;

9. "Poultry waste utilization business" means a business at which poultry waste is collected, destroyed, recycled, processed or recovered into reusable products including, but not limited to, fertilizer and animal feed;

10. "Poultry waste" means excrement, poultry carcasses, feed waste, process wastewater, poultry litter and other waste associated with the confinement of poultry from a poultry feeding operation; and

11. "Poultry feeding operation" means a lot or facility used for the housing, breeding, laying of eggs or feeding of poultry in a restricted environment where the following conditions are met:

- a. poultry have been, are, or will be confined and fed or maintained for a total of thirty (30) days or more in any twelve-month period, and
- b. crops, vegetation, forage growth or postharvest residues are not sustained in the normal growing seasons over any portion of the lot or facility.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 10-9.13-2 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. On and after November 1, 2004, there shall be levied a fee of two cents (\$0.02) per live poultry owned:

1. By an integrator, poultry processing facility or other person under a contract growing arrangement assessed at time of pickup from a contract poultry grower for transportation to a poultry processing facility; or

2. By an independent poultry grower assessed at the time of transportation to a poultry processing facility.

B. The fee assessed pursuant to the provisions of this section shall be for the purpose of providing revenue to the Poultry Waste Transfer and Utilization Incentive Fund.

C. The fee shall be assessed at the time of pickup and transportation of live poultry. The fee shall be remitted to the Oklahoma Tax Commission by the integrator or independent poultry grower as provided by Section 4 of this act.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 10-9.13-3 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. 1. On and after November 1, 2004:

- a. it shall be the duty of every integrator and every independent poultry grower to remit the fee required by the provisions of the Oklahoma Poultry Waste Transfer and Utilization Incentive Act, and make and submit an assessment collection report as required by this section, and
- b. each integrator and independent poultry grower shall make and submit, for each calendar month, an itemized and verified report showing:
  - (1) the name of the integrator or independent poultry grower, as appropriate,
  - (2) the species and total amount of poultry owned by the integrator or independent poultry grower and transported to a poultry processing facility during the preceding month, and
  - (3) such further information as the Tax Commission may require to enable it to compute correctly and collect the fee made pursuant to the Oklahoma Poultry Waste Transfer and Utilization Incentive Act.

2. Every six (6) months the Department shall send an invoice to the integrator and independent poultry grower detailing the total number of poultry reported during the previous six (6) months and the total amount of assessment due for deposit in the Poultry Waste Transfer and Utilization Incentive Fund.

3. The fee assessed pursuant to the provisions of Section 3 of this act shall be remitted to the Oklahoma Tax Commission once every six (6) months at such time and in the manner required by the Oklahoma Tax Commission.

B. 1. Every integrator and independent poultry grower shall keep and preserve suitable records of the total number of poultry transported to a poultry processing facility, the fees collected, and such other pertinent records and documents necessary to determine the amount of fees due, as will substantiate and prove the accuracy of the reports.

2. All the records shall be preserved for a period of three (3) years, unless the Tax Commission, in writing, has authorized their destruction or disposal at an earlier date.

3. The records shall be open for examination by employees of the Tax Commission and the Oklahoma Department of Agriculture, Food, and Forestry in the performance of their duties pursuant to law.

C. Any integrator or independent poultry grower who fails to comply with any provisions of this section shall pay a penalty imposed by the Tax Commission. Any monies collected for payment of the penalty shall be deposited in the same manner as the assessments pursuant to the provisions of the Oklahoma Poultry Waste Transfer and Utilization Incentive Act. The penalty shall be equal to ten percent (10%) of the gross amount of the assessments which should have been remitted by the integrator or independent poultry grower for the report period for which the integrator or independent poultry grower failed to timely mail the required report or remit

any monies collected pursuant to the provisions of the Oklahoma Poultry Waste Transfer and Utilization Incentive Act.

D. The Tax Commission shall keep a separate accounting of all the monies received pursuant to this section and together with any interests and penalties thereon shall deposit such monies monthly as provided in the Oklahoma Poultry Waste Transfer and Utilization Incentive Act.

SECTION 5. AMENDATORY 2 O.S. 2001, Section 10-9.14, is amended to read as follows:

Section 10-9.14 A. There is hereby created in the State Treasury a fund for the ~~State~~ Oklahoma Department of Agriculture, Food, and Forestry to be designated as the Poultry Waste Transfer and Utilization Incentive Fund. The fund shall be a continuing fund not subject to fiscal year limitations and shall consist of:

1. All monies received by the Department for implementing the purpose of the provisions of the Oklahoma Poultry Waste Transfer and Utilization Incentive Act;

2. Interest attributable to investment of money in the Poultry Waste Transfer and Utilization Incentive Fund; and

3. Money received by the Department in the form of gifts, grants, reimbursements, or from any other source intended to be used for the purposes specified by or collected pursuant to the provisions of the Oklahoma Poultry Waste Transfer ~~Fund~~ and Utilization Incentive Act.

B. The monies deposited in the Poultry Waste Transfer and Utilization Incentive Fund shall at no time become monies of the state and shall not become part of the general budget of the Department or any other state agency. Except as provided for in this section, no monies from the Poultry Waste Transfer and Utilization Incentive Fund shall be transferred for any purpose to any other state agency or any account of the Department or be used

for the purpose of contracting with any other state agency or reimbursing any other state agency for any expense.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 10-9.14-1 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. 1. Of the monies accruing annually to the Poultry Waste Transfer and Utilization Incentive Fund, four percent (4%) thereof shall be available to the Oklahoma Tax Commission and four percent (4%) thereof shall be available to the Oklahoma Department of Agriculture, Food, and Forestry for the purpose of administering the requirements of the Oklahoma Poultry Waste Transfer and Utilization Incentive Act.

2. In addition, an amount not to exceed Fifty Thousand Dollars (\$50,000.00) per required audit shall be available to the State Auditor and Inspector for the purpose of conducting audits of the Poultry Waste Transfer and Utilization Incentive Program pursuant to Section 12 of this act.

B. 1. Of the ninety-two percent (92%) of the remaining monies in the Poultry Waste Transfer and Utilization Incentive Fund, ten percent (10%) shall be allocated to poultry waste utilization businesses located in Oklahoma which manufacture new products or reprocess poultry waste according to the requirements of the Oklahoma Poultry Waste Transfer and Utilization Incentive Act.

2. Poultry waste utilization businesses eligible for compensation shall receive a total amount not to exceed fifty percent (50%) of their capital investment in equipment necessary to process poultry waste purchased on or after January 1, 2005, at a rate to be determined by the Oklahoma Department of Agriculture, Food, and Forestry pursuant to Section 9 of this act for each ton of poultry waste reused, processed or consumed.

3. Funds shall be awarded based on a proportionate share of the funds available and based on the relative amount of each capital investment.

4. Eligible poultry waste utilization businesses may apply for compensation monthly to the Oklahoma Tax Commission, and shall supply any information required by the Commission to document compliance with the provisions of the Oklahoma Poultry Waste Transfer and Utilization Incentive Act.

C. The balance of the monies remaining in the Poultry Waste Transfer and Utilization Incentive Fund shall be allocated pursuant to the provisions of the Oklahoma Poultry Waste Transfer and Utilization Incentive Act to persons or other legal entities authorized by the provisions of the Oklahoma Poultry Waste Transfer and Utilization Incentive Act to receive reimbursement for the hauling of poultry waste to poultry waste utilization businesses.

D. In addition to the monies made available for equipment, poultry waste utilization businesses meeting the requirements of the Oklahoma Poultry Waste Transfer and Utilization Incentive Act shall also be eligible for compensation from the Poultry Waste Transfer and Utilization Incentive Fund for processing poultry waste in this state to the extent that funds are therein contained, at a rate to be determined by the Oklahoma Department of Agriculture, Food, and Forestry pursuant to Section 9 of this act for each ton of poultry waste processed in any calendar year by the facility as demonstrated through the application and submission of documentation to the Oklahoma Tax Commission.

E. 1. Any poultry waste hauler shall be eligible for compensation from the Poultry Waste Transfer and Utilization Incentive Fund at a rate to be determined by the Oklahoma Department of Agriculture, Food, and Forestry pursuant to Section 9 of this act for each ton of poultry waste collected and transported and delivered to a poultry waste utilization business or transported to

designated regions of the state determined by the Oklahoma Conservation Commission to have soil conditions which would derive benefit from land application of poultry waste.

2. Compensation pursuant to this subsection shall be payable only for the poultry waste collected, transported and delivered to a poultry waste utilization business, for the waste transported to designated regions of the state for land application and for the poultry waste actually processed by the poultry waste utilization business in accordance with the purposes of the Oklahoma Poultry Waste Transfer and Utilization Incentive Act and as authorized by the Department pursuant thereto.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 10-9.14-2 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. 1. A poultry waste utilization business, or a person or other legal entity authorized to receive reimbursement pursuant to Section 6 of this act, desiring to be compensated from the Poultry Waste Transfer and Utilization Incentive Fund shall first make application to the Oklahoma Tax Commission on forms prescribed by the Tax Commission containing documentation as required by the Oklahoma Poultry Waste Transfer and Utilization Incentive Act and such other information as the Tax Commission determines is needed to comply with the Oklahoma Poultry Waste Transfer and Utilization Incentive Act.

2. On at least a monthly basis, the Tax Commission shall evaluate and process applications.

B. 1. Poultry waste utilization businesses shall report and certify poultry waste processing activity in terms of weight. The poultry waste utilization business shall by sworn affidavit provide sufficient information to verify that the facility has processed poultry waste in accordance with the purposes of the Oklahoma Poultry Waste Transfer and Utilization Incentive Act.

2. Persons and other legal entities authorized to receive reimbursement for hauling poultry waste pursuant to Section 6 of this act shall report and certify the tons of poultry waste collected, transported and delivered to poultry waste utilization businesses or transported to designated regions of the state for land application. Such persons or other legal entities shall by sworn affidavit provide sufficient information to verify that such person or legal entity has collected, transported and delivered the poultry waste in accordance with Section 6 of this act.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 10-9.14-3 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Upon receiving completed applications and upon determining that there are sufficient monies in the Poultry Waste Transfer and Utilization Incentive Fund, the Oklahoma Tax Commission shall compensate poultry waste utilization businesses and any person or other legal entity authorized to receive reimbursement pursuant to Section 6 of this act as applicable for:

1. Processing the tons documented in the application; or
2. The collection, transportation and delivery of poultry waste documented in the application.

B. If the Incentive Fund contains insufficient funds in any month, then the Oklahoma Tax Commission shall apportion the payments among all the qualifying applicants according to the percentage of poultry waste collected, transported, delivered or processed.

C. The Department shall evaluate each poultry waste utilization business and legal entity authorized to receive reimbursement pursuant to Section 6 of this act every three (3) years.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 10-9.14-3 of Title 2, unless there is created a duplication in numbering, reads as follows:

By January 1, 2005, the Oklahoma Department of Agriculture, Food, and Forestry and the Oklahoma Tax Commission shall determine the rate of reimbursement for processing poultry waste and the rate for collection, transportation and delivery of the poultry waste based on the number of poultry collected and transported to poultry processing facilities on a monthly basis and an estimated amount of poultry waste produced each year. The rates for reimbursement shall be sufficient to encourage the processing and reuse of poultry waste into beneficial products as well as encourage the collection and transportation of waste to poultry waste utilization businesses or to regions of the state determined by the Oklahoma Conservation Commission to have soil conditions which would derive benefit from land application of the poultry waste.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 10-9.14-4 of Title , unless there is created a duplication in numbering, reads as follows:

The State Board of Agriculture and the Oklahoma Tax Commission shall promulgate rules to carry out the provisions of the Oklahoma Poultry Waste Transfer and Utilization Incentive Act which pertain to the determination and remittance of assessments and the allocation of monies accruing to the Poultry Waste Transfer and Utilization Incentive Fund.

SECTION 11. AMENDATORY 2 O.S. 2001, Section 10-9.15, is amended to read as follows:

Section 10-9.15 The ~~State~~ Oklahoma Department of Agriculture, Food, and Forestry shall file a report with the Legislature and the Governor detailing the administration of the Oklahoma Poultry Waste Transfer and Utilization Incentive Act and its effectiveness in bringing about the prevention of water pollution in this state. The first report shall be filed no later than December 31, ~~1999~~ 2005. Subsequent reports shall be filed every three (3) years thereafter.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 10-9.15-1 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. By August 1, 2006, and every even year thereafter, the State Auditor and Inspector shall conduct or shall contract with an auditor or auditing company to conduct an independent audit of the books, records, files and other such documents of the Oklahoma Department of Agriculture, Food, and Forestry pertaining to and which relate to the administration of the Poultry Waste Transfer and Utilization Incentive Fund. The audit shall include, but shall not be limited to, a review of agency and claimant compliance with state statutes regarding the Fund, internal control procedures, adequacy of claim process expenditures from and debits of the Fund regarding reimbursements, administration, personnel and operating and other expenses charged by the Department; the duties performed in detail by agency personnel and Fund personnel for which payment is made from the Fund, and recommendations for improving claim processing, equipment needed for claim processing, internal control or structure for administering the Fund; and such other areas deemed necessary by the State Auditor and Inspector.

B. The cost of the audit shall be borne by the Poultry Waste Transfer and Utilization Incentive Fund, pursuant to the limits and provisions of Section 6 of this act.

C. Copies of the audit shall be submitted to the State Auditor and Inspector, the Governor, the Speaker of the House of Representatives, the President Pro Tempore of the Senate and the Chairmen of the Appropriations Committees of both the Oklahoma House of Representatives and the State Senate.

SECTION 13. Sections 1, 2, 3, 4, 5 and 10 of this act shall become effective July 1, 2004.

SECTION 14. Sections 6, 7, 8, 9, 11 and 12 shall become effective January 1, 2005.

SECTION 15. 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.

49-2-8078          KSM          01/11/04