

ENROLLED HOUSE
BILL NO. 3187

By: DeWitt and Jett of the
House

and

Justice and Rice of the
Senate

An Act relating to agriculture; creating the Oklahoma Oilseed Resources Act; specifying purpose of act; defining terms; creating the Oklahoma Oilseed Commission; providing for duration of Commission; specifying areas represented by the Commission; providing for terms of membership; providing for vacancies; providing for removal of members; specifying powers and duties of Commission; providing for certain audit; providing for annual report; providing for surety bonds; providing for funds collected; specifying prohibition on use of funds; providing for certain immunity from liability; specifying election procedures; providing for promulgation of rules; providing for fee assessment; implementing fee assessment upon the ceasing of assessment by the national checkoff; providing for annual report of income and expenditure; providing for refund of fee assessment; specifying procedures; creating the Oklahoma Oilseed Resources Fund; providing for use; providing for revenues; authorizing subcommittees to control the Fund; providing for investment; modifying date for a referendum on assessments; 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 18-270 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 Oilseed Resources Act".

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

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 18-271 of Title 2, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Oilseed Resources Act:

1. "Canola" means canola, rapeseed and any Brassica plant grown in Oklahoma for the production of an oilseed, the oil and meal of which are used for food or nonfood use;

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

3. "Commercial quantities" means and includes all hundredweights (CWT) of oilseed produced for market in any calendar year by any producer;

4. "Commission" means the Oklahoma Oilseed Commission;

5. "Department" means the Oklahoma Department of Agriculture, Food, and Forestry;

6. "First purchaser" means any person buying or acquiring after harvest the property in or to oilseed from an oilseed producer. A mortgagee, pledgee, lienholder, or other person having a claim against the oilseed producer under a nonrecourse loan made against the oilseed after harvest shall be a purchaser. The term "first purchaser" shall not include a harvesting or threshing lienee;

7. "Fiscal year" means the oilseed accounting year beginning July 1 of each year and ending June 30 of the following year;

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

9. "Oilseed" means any seed or crop grown primarily or mainly for oil;

10. "Oilseed processor" means a person who commercially manufactures products made from oilseed or animal feed; and

11. "Oilseed producer" or "producer" means an individual engaged in the production of oilseed, who markets oilseed in commercial quantities in Oklahoma. Each individual determined to be an entity pursuant to rules promulgated by the United States Department of Agriculture Farm Service Agency shall be considered an oilseed producer.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 18-272 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. There is created until June 1, 2012, in accordance with the provisions of the Oklahoma Sunset Law, the Oklahoma Oilseed 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 oilseed in this state for a period of at least two (2) years, and

c. derive a portion of their income from the production of oilseed.

2. The President of the 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 oilseed 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 the counties of Cimarron, Texas, Beaver, Harper, Woodward, Ellis, Dewey, Roger Mills, and Custer;

2. District 2 shall consist of the counties of Beckham, Washita, Caddo, Grady, Greer, Kiowa, Comanche, Harmon, Jackson, Tillman, and Cotton;

3. District 3 shall consist of the counties of Woods, Alfalfa, Major, Blaine, Kingfisher, Canadian, Grant, Kay, Garfield, Noble, Logan, Payne, Oklahoma, and Lincoln;

4. District 4 shall consist of the counties of Osage, Washington, Nowata, Craig, Ottawa, Pawnee, Rogers, Mayes, Delaware, Creek, Tulsa, Wagoner, Cherokee, Adair, Okfuskee, Okmulgee, Muskogee, Sequoyah, and McIntosh; and

5. District 5 shall consist of the counties of Cleveland, Pottawatomie, Seminole, Hughes, Pittsburg, Haskell, Le Flore, 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 District 2,
- c. four (4) years for District 3,
- d. five (5) years for District 4, and
- e. six (6) years for District 5.

Thereafter the term of office shall be for five (5) years. An elected member of the Commission may serve for two consecutive full five-year terms. Upon completion of two consecutive full five-year terms, a member shall not be eligible for election for a period of one term before becoming eligible for election to the Commission for two additional consecutive five-year 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 vacated. The Commission shall submit, in writing, the name of the 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 select, 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 Oilseed Resources Act.

G. A member of the Oklahoma Oilseed 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 or plant oilseed in the district from which the member was elected,

shall be sufficient cause for removal from office.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 18-273 of Title 2, unless there is created a duplication in numbering, reads as follows:

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

1. Elect Commission officers to provide leadership and organization;

2. Call and conduct meetings as necessary in carrying out the provisions of the Oklahoma Oilseed Resources Act;

3. Appoint subcommittees for each oilseed represented such as canola and any other oilseeds to 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 oilseed;

4. Approve financial matters;

5. Maintain and enforce provisions of the Oklahoma Oilseed Resources Act;

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

7. Conduct assessment referenda pursuant to the Oklahoma Oilseed Resources Act;

8. Conduct programs consistent with the Oklahoma Oilseed 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 Oilseed Resources Act;

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

11. Collect and disseminate information relating to oilseed production;

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

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

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

15. Seek information from oilseed 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 oilseed industry and benefits the profitability of producers; 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 oilseed; and

17. Take any other actions deemed necessary by the Commission to implement the provisions of the Oklahoma Oilseed 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 Oklahoma Department of Agriculture, Food, and Forestry 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 Oilseed Resources Act as trust funds of the Commission.

C. Any funds received by the Commission pursuant to the provisions of the Oklahoma Oilseed 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. 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 an oilseed producer or other person for actions or omissions taken pursuant to this act that are:

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

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 18-274 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 Oilseed Commission shall be elected by the oilseed producers in the district that the member represents. Each member will represent the district in which the member resides and produces oilseed.

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

C. 1. An oilseed producer who desires to be a candidate for the Commission shall file a petition signed by the potential candidate and at least ten oilseed producers in the district with the Oklahoma Department of Agriculture, Food, and Forestry 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 forty-five (45) days' notice published in one or more newspapers published and distributed in the established election districts. The notice shall be published not less than once a week for two (2) consecutive weeks. The public notice shall include the date, time, and polling places for voting in the election and any other information deemed necessary by the Department for the initial election, and deemed necessary by the Commission to inform oilseed 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 oilseed producer in the district who is actively engaged in the production of oilseed in commercial quantities in the current fiscal year of the calling of the election shall be entitled to vote in any 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 oilseed producer's name and address and the amount of oilseed sold.

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

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

E. The Department shall bear all reasonable expenses incurred in conducting the election of the initial Commission. All the 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 oilseed 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 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. 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 Oilseed Commission, and a representative designated by the Oklahoma Department of Agriculture, Food, and Forestry.

2. The candidate receiving the largest number of votes cast in the district election shall be elected to office. In case of a tie vote, the President will cast the tie-breaking vote.

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 the 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.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 18-275 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 Oklahoma Oilseed Commission, there is hereby assessed a fee to be determined by each oilseed subcommittee for oilseed marketed by oilseed producers in this state and sold or handled through commercial channels. The fee shall be assessed and imposed upon the oilseed 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 the Oklahoma Oilseed Resources Act, no

oilseed shall be subject to assessment of a fee more than once including a national checkoff. If the assessment of a national checkoff fee ceases to exist, an Oklahoma assessment shall then be implemented.

B. 1. The first purchaser shall collect the assessment by deducting the appropriate amount from the purchase price of the oilseed 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 oilseed 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 18-276 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. The first purchaser shall render and have on file a report along with remittance of the fees collected pursuant to the Oklahoma Oilseed Resources Act on the fifteenth of each calendar quarter. The report shall include the total amount of fees assessed by the first purchaser, the total amount of oilseed purchased and other information as may be required by the Oklahoma Oilseed Commission.

B. If the first purchaser fails to make a report and remittance as required by the Oklahoma Oilseed 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 Oilseed Resources Act shall, within ten (10) days after notice of the computed collection amount established by the Commission is mailed to the 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 payment. The payment of the determined collection amount and penalty shall be paid within ten (10) days of notice of the decision.

C. At any time the Oklahoma Department of Agriculture, Food, and Forestry 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 Oilseed 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 18-277 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. The chair of the Oklahoma Oilseed 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 Oilseed Resources Act. The annual report shall include a list of all officers and any employees of the Commission and shall indicate the official positions of officers and any employees and salaries paid.

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 18-278 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Any oilseed producer subject to the assessment provided in the Oklahoma Oilseed Resources Act may request a refund of the fees so assessed, within sixty (60) days following the collection of the fee. Any oilseed producer requesting a refund shall make application to the Oklahoma Oilseed Commission for the refund of the

assessment. Along with the application, the oilseed producer shall submit the evidence of payment of the fee and of the amount of oilseed sold required by the Commission. The Commission may verify the accuracy of the request for the refund.

B. 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 and the Commission received payment from the first purchaser.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 18-279 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. There is created the Oklahoma Oilseed Resources Fund. The Oklahoma Oilseed Resources Fund shall be administered by the Oklahoma Oilseed Commission for the benefit of the oilseed producers in this state for the purposes specified by the Oklahoma Oilseed Resources Act. The Oklahoma Oilseed Resources Fund shall be established and maintained in a bank or other depository as approved by the Commission and the President of the State Board of Agriculture.

B. The Oklahoma Oilseed Resources Fund shall consist of:

1. All monies received by the Commission as proceeds from the assessment imposed pursuant to the Oklahoma Oilseed Resources Act and each individual oilseed shall be distributed by collections to the account of the specific oilseed. The subcommittees established pursuant to Section 4 of this act shall control each individual account;

2. Interest attributable to investment of money in the Oklahoma Oilseed 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 Oilseed Resources Fund.

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

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

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

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

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 18-280 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 Oilseed Resources Fund may be invested by the Oklahoma Oilseed Commission in securities of the state or federal government, certificates of deposit or certificates of any bank, trust company, or savings and loan association insured by a federal agency. The principal and interest when due shall be paid into the Oklahoma Oilseed Resources Fund.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 18-281 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Oilseed 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, 2008. 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 oilseed producers. No more than one referendum shall be conducted in any one thirty-six-month period. The Oklahoma Department of Agriculture, Food, and Forestry 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 the referendum to all known oilseed producers in the State of Oklahoma who market oilseed 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 THREE CENTS (\$0.03) PER HUNDREDWEIGHT (CWT) ASSESSMENT ON OILSEED MARKETED IN OKLAHOMA

FOR UTILIZATION, RESEARCH, EDUCATION, PROMOTION, AND MARKET DEVELOPMENT?

YES ()

NO ()

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

C. 1. The results of the referendum shall be determined by the President, and the results certified to the Chair 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 oilseed 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 the referendum.

SECTION 13. This act shall become effective November 1, 2008.

Passed the House of Representatives the 6th day of May, 2008.

Presiding Officer of the House of
Representatives

Passed the Senate the 16th day of April, 2008.

Presiding Officer of the Senate