

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 HOUSE BILL 2917

By: Richardson

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5
6 AS INTRODUCED

7 An Act relating to agriculture; enacting the Oklahoma
8 Poultry Nutrient Utilization Act; stating purpose of
9 act; defining terms; creating the Oklahoma Poultry
10 Nutrient Utilization Council; outlining membership
11 requirements of Council; stating terms of office;
12 providing for vacancy or removal of members; stating
13 quorum requirement; prohibiting compensation of
14 members; providing for certain reimbursement of
15 members; listing powers and duties of Council;
16 directing Council to provide copy of annual
17 independent audit; requiring annual report be
18 submitted to Oklahoma Department of Agriculture,
19 Food, and Forestry; requiring surety bonds; mandating
20 collection of funds; prohibiting funds from certain
21 uses; exempting Council from liability; exempting
22 individual Council members from liability; providing
23 for assessment on all birds delivered to the
24 integrator; requiring remittance of assessment to the
Department; directing how assessment is collected;
requiring notification to integrators; requiring
report; providing for failure to submit report and
remittance; directing Council to determine amount;
allowing for hearing in cases of dispute over the
amount; permitting Department to request an audit at
any time; directing integrator to keep records for
certain time; describing how assessments are
deposited; requiring nutrient management plans be
provided; directing State Board of Agriculture to
promulgate rules for collection and remittance
procedures; allowing registered poultry feeding
operation to request refund; stating refund
procedures; requiring Council to submit annual
report; directing that report be open to the public;
requiring Council to keep records for certain time;

1 creating the Oklahoma Poultry Nutrient Utilization
2 Fund; directing Department to administer the fund;
3 stating contents of fund; limiting use of fund;
4 providing for codification; and providing an
5 effective date.

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

7 SECTION 1. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 18-500 of Title 2, unless there
9 is created a duplication in numbering, reads as follows:

10 A. Sections 1 through 8 of this act shall be known and may be
11 cited as the "Oklahoma Poultry Nutrient Utilization Act".

12 B. The purpose of the Oklahoma Poultry Nutrient Utilization Act
13 shall be to provide funds for the development of nutrient management
14 plans for registered poultry feeding operations that pay a voluntary
15 assessment.

16 SECTION 2. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 18-501 of Title 2, unless there
18 is created a duplication in numbering, reads as follows:

19 As used in the Oklahoma Poultry Nutrient Utilization Act:

20 1. "Council" means the Oklahoma Poultry Nutrient Utilization
21 Council;

22 2. "Integrator" means an entity which unites the elements
23 associated with the poultry industry, including but not limited to
24 hatching, feeding, processing and marketing. It includes but is not

1 limited to situations when growing is contracted out to others and
2 when the integrator operates its own growing facilities;

3 3. "Nutrient management plan" means a written plan that
4 includes a combination of conservation and management practices
5 designed to protect the natural resources of the state as required
6 by the Oklahoma Department of Agriculture, Food, and Forestry, and
7 includes the plan titled animal waste management or comprehensive
8 nutrient management plan; and

9 4. "Registered poultry feeding operation" means a poultry
10 feeding operation registered with the Oklahoma Department of
11 Agriculture, Food, and Forestry pursuant to the Oklahoma Registered
12 Poultry Feeding Operations Act.

13 SECTION 3. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 18-502 of Title 2, unless there
15 is created a duplication in numbering, reads as follows:

16 A. There shall be created the Oklahoma Poultry Nutrient
17 Utilization Council.

18 B. The Council shall be composed of the following:

19 1. Two members nominated by any other registered poultry
20 feeding operation and appointed by the State Board of Agriculture
21 who:

22 a. are at least twenty-five (25) years of age and are
23 residents of the state.

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1 (1) One member shall be a resident of and have a
2 registered poultry feeding operation in the
3 northeast portion of the state.

4 (2) One member shall be a resident of and have a
5 registered poultry feeding operation in the
6 southeast portion of Oklahoma,

7 b. have been operating a registered poultry feeding
8 operation in this state for a period of at least five
9 (5) years, and

10 c. derive a portion of their income from the production
11 of poultry; and

12 2. The President of the State Board of Agriculture. The
13 President may appoint a designee to serve on the Council in the
14 place of the President.

15 C. The terms of office for the nominated members shall be for
16 three (3) years.

17 D. If for any reason there is a vacancy on the Council due to
18 resignation, death, or for any cause resulting in an unexpired term,
19 the President of the State Board of Agriculture may name a person to
20 serve for the remainder of the term of the office vacated. In
21 addition, a member ceasing to be a resident of the state or ceasing
22 to produce poultry in the area of the state from which the member
23 was appointed shall be sufficient cause for removal from office.

1 E. The Council shall hold meetings as necessary at a place and
2 time to be fixed by the Council. Two members of the Council shall
3 constitute a quorum.

4 F. Council members shall not receive any compensation, but
5 shall be reimbursed in accordance with the provisions of the State
6 Travel Reimbursement Act in Title 74 of the Oklahoma Statutes for
7 all actual and necessary expenses incurred in the performance of the
8 duties imposed upon the Council pursuant to the Oklahoma Poultry
9 Nutrient Utilization Act.

10 SECTION 4. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 18-503 of Title 2, unless there
12 is created a duplication in numbering, reads as follows:

13 A. Pursuant to the Oklahoma Poultry Nutrient Utilization Act,
14 the Oklahoma Poultry Nutrient Utilization Council shall have the
15 power and duty to:

16 1. Call and conduct meetings as necessary in carrying out the
17 provisions of the Oklahoma Poultry Nutrient Utilization Act;

18 2. Formulate basic objectives and the general policies and
19 programs of the state regarding the drafting of nutrient management
20 plans for poultry producers;

21 3. Approve financial matters;

22 4. Collect voluntary assessments of poultry producers;

23 5. Conduct programs consistent with the Oklahoma Poultry
24 Nutrient Utilization Act;

1 6. Develop bylaws for the due and orderly administration of the
2 affairs of the Council and for its responsibilities specified
3 pursuant to the provisions of the Oklahoma Poultry Nutrient
4 Utilization Act;

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

8 8. Contract with agencies of this state and its political
9 subdivisions, other states, the federal government and other
10 organizations or persons to comply with and fulfill its mission
11 pursuant to the provisions of the Oklahoma Poultry Nutrient
12 Utilization Act; and

13 9. Take any other actions deemed necessary by the Council to
14 implement the provisions of the Oklahoma Poultry Nutrient
15 Utilization Act.

16 B. In addition, the Council shall:

17 1. Make available for inspections during an annual independent
18 audit each fiscal year by a competent accountant or auditor, all
19 books, records of accounting, and minutes of proceedings maintained
20 by the Council. The Council shall provide to the Oklahoma
21 Department of Agriculture, Food, and Forestry a copy of the annual
22 audit performed pursuant to this section;

23 2. Not later than forty-five (45) days after the last day of
24 the fiscal year, submit to the President of the State Board of

1 Agriculture a report itemizing all income and expenditures and
2 describing all activities of the Council during the fiscal year;

3 3. Provide surety bonds in amounts determined by the Office of
4 State Finance for any members who handle funds for the Council; and

5 4. Receive, hold in trust and disburse all assessments and
6 other funds collected pursuant to the Oklahoma Poultry Nutrient
7 Utilization Act as trust funds of the Council.

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

13 D. 1. Except for instances of gross negligence, individual
14 criminal actions or acts of dishonesty, the Council shall not be
15 individually liable to a poultry producer or other person for
16 actions or omissions taken pursuant to the Oklahoma Poultry Nutrient
17 Utilization Act that are:

18 a. errors in judgment, or

19 b. mistakes.

20 2. A member of the Council shall not be individually liable for
21 an act or omission of another member of the Council.

22 SECTION 5. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 18-504 of Title 2, unless there
24 is created a duplication in numbering, reads as follows:

1 A. Beginning February 1, 2013, there shall be assessed a fee of
2 one-tenth (1/10) of one cent (\$0.01) per bird upon all birds
3 delivered to the integrator. The fee shall be assessed and imposed
4 upon the registered poultry feeding operation at the time of
5 delivery to the integrator and shall be collected and remitted by
6 the integrator to the Oklahoma Department of Agriculture, Food, and
7 Forestry.

8 B. 1. The integrator shall collect the assessment by deducting
9 the appropriate amount from the purchase price of the birds or from
10 any funds advanced for that purpose.

11 2. The Council, by certified mail, shall notify each integrator
12 of the duty to collect the assessment, the manner in which the
13 assessment shall be collected and the date on or after which the
14 integrator shall begin collecting the assessment.

15 3. The amount of the assessment collected shall be clearly
16 shown on the sales invoice or other document evidencing the
17 transaction. The integrator shall furnish a copy of the document to
18 the registered poultry feeding operation.

19 C. 1. The integrator shall render and have on file a report
20 along with remittance of the fees collected pursuant to the Oklahoma
21 Poultry Nutrient Utilization Act on the fifteenth of each calendar
22 quarter. The report shall include the total amount of fees assessed
23 by the integrator, the total amount of birds purchased and other
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1 information as required by the Oklahoma Poultry Nutrient Utilization
2 Council.

3 2. If the integrator fails to make a report and remittance as
4 required by the Oklahoma Poultry Nutrient Utilization Act, the
5 Council shall determine the amount collected and owed by the
6 integrator, which shall be prima facie correct. Any integrator
7 having failed to make the report as required by the Oklahoma Poultry
8 Nutrient Utilization Act shall, within ten (10) days after notice of
9 the computed collection amount established by the Council is mailed
10 to the integrator, pay the computed collection amount, together with
11 a penalty of five percent (5%) of the computed collection amount.
12 The integrator may dispute the computed collection amount
13 established by the Council and request the Council to hold a hearing
14 to recalculate the amount of the computed collection and the penalty
15 to be imposed. No payment shall be made until the Council enters
16 its order determining the amount of payment. The ordered amount and
17 penalty shall be paid within ten (10) days of notice of the
18 decision.

19 3. At any time the Oklahoma Department of Agriculture, Food,
20 and Forestry may request an audit of the first purchaser to
21 determine whether the collection and proper disposition of the
22 collected assessment were made pursuant to the provisions of the
23 Oklahoma Poultry Nutrient Utilization Act and rules promulgated
24 pursuant thereto.

1 4. The integrator shall retain any records or reports related
2 to the collection of the assessment for at least three (3) years.

3 D. 1. Collected assessments shall be deposited in a fund to be
4 used solely for the purpose of securing the services of drafting
5 nutrient management plans for the registered poultry feeding
6 operations which voluntarily submit assessments.

7 2. Nutrient management plans shall be provided at no additional
8 charge to any registered poultry feeding operation that has paid
9 into the fund for a minimum of six (6) years or since the effective
10 date of the Oklahoma Poultry Nutrient Utilization Act, whichever is
11 shorter.

12 3. Any registered poultry feeding operation that has not paid
13 into the fund for a minimum of six (6) years or since the effective
14 date of the Oklahoma Poultry Nutrient Utilization Act may request a
15 nutrient management plan from the Council by paying in advance the
16 difference between the amount paid into the fund and the actual cost
17 of the nutrient management plan.

18 4. The State Board of Agriculture shall establish by rule the
19 procedures for the collection and remittance of the assessment, in
20 addition to other rules necessary for the administration of the
21 Oklahoma Poultry Nutrient Utilization Act.

22 SECTION 6. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 18-505 of Title 2, unless there
24 is created a duplication in numbering, reads as follows:

1 A. Any registered poultry feeding operation subject to the
2 assessment provided in the Oklahoma Poultry Nutrient Utilization Act
3 may request a refund of the fees so assessed, within sixty (60) days
4 following the collection of the fee. Any registered poultry feeding
5 operation requesting a refund shall make application to the Oklahoma
6 Poultry Nutrient Utilization Council for the refund of the
7 assessment. Along with the application, the registered poultry
8 feeding operation shall submit the evidence of payment of the fee
9 and of the amount of birds sold as required by the Council. The
10 Council may verify the accuracy of the request for the refund.

11 B. Upon receipt of the application for a refund and evidence
12 required, the Council shall refund the amount of the assessment owed
13 to the registered poultry feeding operation within thirty (30) days
14 of the date the refund request was received and the Council received
15 payment from the integrator.

16 SECTION 7. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 18-506 of Title 2, unless there
18 is created a duplication in numbering, reads as follows:

19 A. The Oklahoma Poultry Nutrient Utilization Council shall make
20 an annual report to the Secretary of Agriculture, within forty-five
21 (45) days after June 30 of each year, showing in detail all income
22 and expenditures and any other facts relevant to the Oklahoma
23 Poultry Nutrient Utilization Act.

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1 B. The report shall be available to the public. A copy shall
2 be sent upon request to any producer upon whom the assessment is
3 assessed.

4 C. All records of the Council shall be kept at least six (6)
5 years.

6 SECTION 8. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 18-507 of Title 2, unless there
8 is created a duplication in numbering, reads as follows:

9 A. There shall be created the Oklahoma Poultry Nutrient
10 Utilization Fund. The fund shall be administered by the Oklahoma
11 Department of Agriculture, Food, and Forestry for the benefit of the
12 registered poultry feeding operations in this state for the purposes
13 specified by the Oklahoma Poultry Nutrient Utilization Act.

14 B. The Oklahoma Poultry Nutrient Utilization Fund shall consist
15 of:

16 1. All monies received by the Council as proceeds from the
17 voluntary assessment pursuant to the Oklahoma Poultry Nutrient
18 Utilization Act;

19 2. Interest attributable to investment of money in the Oklahoma
20 Poultry Nutrient Utilization Fund; and

21 3. Monies received by the Council in the form of gifts, grants,
22 reimbursements, or from any other source designated by law for
23 deposit to the Oklahoma Poultry Nutrient Utilization Fund.

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1 C. Monies in the Oklahoma Poultry Nutrient Utilization Fund
2 shall only be expended for implementation and management of the
3 Oklahoma Poultry Nutrient Utilization Act.

4 SECTION 9. This act shall become effective November 1, 2012.

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