

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 56th Legislature (2018)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2820

By: Lepak

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8
9 COMMITTEE SUBSTITUTE

10 An Act relating to the Oklahoma Department of
11 Agriculture, Food, and Forestry; amending 2 O.S.
12 2011, Sections 1-2, 1-3, 2-1, 2-3 and 2-4, as last
13 amended by Section 1, Chapter 20, O.S.L. 2015 (2 O.S.
14 Supp. 2017, Section 2-4), which relate to the State
15 Board of Agriculture; clarifying language; modifying
16 definitions; making Board an advisory body;
17 authorizing Governor to appoint Secretary of
18 Agriculture; providing for determination of
19 compensation; modifying powers and duties of the
20 Board; repealing 2 O.S. 2011, Section 2-2, as amended
21 by Section 1, Chapter 7, O.S.L. 2012 (2 O.S. Supp.
22 2017, Section 2-2), which relates to compensation and
23 meeting of the Board; and providing an effective
24 date.

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

SECTION 1. AMENDATORY 2 O.S. 2011, Section 1-2, is
amended to read as follows:

Section 1-2. The State Oklahoma Department of Agriculture,
Food, and Forestry shall consist of ~~the State Board of Agriculture,~~

1 the divisions⁷ and other positions and offices as established by law
2 and by the ~~Board~~ Commissioner of Agriculture.

3 SECTION 2. AMENDATORY 2 O.S. 2011, Section 1-3, is
4 amended to read as follows:

5 Section 1-3. For the purposes of the Oklahoma Agricultural
6 Code, unless the context indicates otherwise:

7 1. "Authorized agent" means a person who has been authorized by
8 the ~~State Board of Agriculture~~ Commissioner of Agriculture to act on
9 behalf of the ~~Board~~ Oklahoma Department of Agriculture, Food, and
10 Forestry in making investigations, inspections, performing other
11 services, or doing any particular act or acts which have been vested
12 by the Oklahoma Agricultural Code ~~in the Board~~. A written or
13 printed commission signed by the ~~President of the Board~~ Commissioner
14 shall be proof that the holder has lawful authority to act on behalf
15 of the ~~Board~~ Department in implementing the Oklahoma Agricultural
16 Code;

17 2. "Board" means the State Board of Agriculture;

18 3. "Code" means the Oklahoma Agricultural Code;

19 4. "Department" means the Oklahoma Department of Agriculture,
20 Food, and Forestry and its employees, officers, and divisions.

21 Whenever the name "Department of Agriculture" appears in any law,
22 contract or other document, it shall be deemed to refer to the
23 Oklahoma Department of Agriculture, Food, and Forestry;

1 5. "Director" means the Director of a division established in
2 the Oklahoma Department of Agriculture, Food, and Forestry;

3 6. "License" means a written document issued by the ~~Board~~
4 Department granting authority to a person to engage in a business,
5 occupation, or activity;

6 7. "Livestock" or "animals" means any cattle, bison, horses,
7 sheep, goats, asses, mules, swine, domesticated rabbits, and
8 chickens, turkeys, and other domesticated fowl, and any animal or
9 bird in captivity;

10 8. "Permit" means a written document issued by the ~~Board~~
11 Department giving consent for a person to engage in an activity;

12 9. "Person" means the state, any municipality, political
13 subdivision, institution, individual, public or private corporation,
14 partnership, association, firm, company, public trust, joint-stock
15 company, trust, estate, state or federal agency, other governmental
16 entity, or any other legal entity or an agent, employee,
17 representative, assignee or successor thereof;

18 10. ~~"President" means the President of the State Board of~~
19 ~~Agriculture. The President of the State Board of Agriculture shall~~
20 ~~also be designated as the Commissioner of Agriculture;~~

21 ~~11.~~ "Producer" means any person planting, raising, growing, or
22 harvesting agricultural products;

23 ~~12.~~ 11. "Quarantine" means a written document issued by the
24 Board to restrict the movement of animals, birds, plants, or

1 agricultural commodities into or out of a specified area for the
2 control or prevention of diseases or pests; and

3 ~~13.~~ 12. "Stop sale order" or "stop use order" means a written
4 or printed order signed by the ~~President~~ Commissioner or authorized
5 agent of the ~~Board~~ Commissioner, prohibiting the sale, offering for
6 sale, exposure for sale, or use of any agricultural product,
7 article, device, service, or commodity covered by the Oklahoma
8 Agricultural Code.

9 SECTION 3. AMENDATORY 2 O.S. 2011, Section 2-1, is
10 amended to read as follows:

11 Section 2-1. A. 1. The State Board of Agriculture shall be
12 the Board of Agriculture created by Section 31 of Article VI of the
13 Oklahoma Constitution. The Board shall be an advisory body to the
14 Commissioner of Agriculture and shall consist of five (5) members
15 appointed by the Governor, with the advice and consent of the
16 Senate. Four ~~of such~~ members shall be appointed from within and
17 represent the agricultural district established by subsection B of
18 this section. One member shall be appointed from the state at
19 large.

20 2. The members shall be farmers who have:

21 a. at least five (5) years practical experience during
22 the ten (10) years immediately preceding their
23 appointment, and
24

b. lived on and operated a farm after reaching the age of
twenty-one (21) years.

B. For the purpose of appointments to the Board, four
agricultural districts are hereby created and shall consist of the
following counties:

DISTRICT	COUNTIES
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NO.	
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1.....	Atoka, Bryan, Choctaw, Coal, Haskell, Hughes, Johnston, Latimer, LeFlore, Marshall, McCurtain, McIntosh, Muskogee, Okfuskee, Okmulgee, Pittsburg, Pontotoc, Pottawatomie, Pushmataha, Seminole and Sequoyah.
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2.....	Adair, Cherokee, Craig, Creek, Delaware, Kay, Lincoln, Logan, Mayes, Noble, Nowata, Oklahoma, Osage, Ottawa, Pawnee, Payne, Rogers, Tulsa, Wagoner and Washington.
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3.....	Alfalfa, Beaver, Blaine, Cimarron, Custer, Dewey, Ellis, Garfield, Grant, Harper, Kingfisher, Major, Roger Mills, Texas, Woods and Woodward.
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4.....	Beckham, Caddo, Canadian, Carter, Cleveland, Comanche, Cotton, Garvin, Grady, Greer, Harmon, Jackson, Jefferson, Kiowa, Love, McClain, Murray, Stephens, Tillman and Washita.
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C. One member of the Board shall be appointed from each
district.

1 D. 1. On the effective date of this act, each district
2 established by subsection B of this section shall be represented by
3 the current board member position as follows:

4 a. the board member position currently representing
5 District 5 shall represent the new District 1,

6 b. the board member position currently representing
7 District 2 shall represent the new District 2,

8 c. the board member position currently representing
9 District 1 shall represent the new District 3, and

10 d. the board member position currently representing
11 District 4 shall represent the new District 4.

12 2. The board member position currently serving District 3 shall
13 be terminated.

14 3. Except as otherwise provided in this subsection, all board
15 members serving on the effective date of this act shall serve the
16 remainder of the term of office to which the board member was
17 originally appointed. Thereafter, successor board members shall be
18 appointed for terms of four (4) years. The at-large member shall
19 serve a term coterminous with that of the Governor.

20 4. In case of vacancy caused by the removal, death,
21 resignation, or disability of any member, the Governor shall appoint
22 a new member from the same district for which a vacancy was vacated
23 to serve for the unexpired term.
24

1 SECTION 4. AMENDATORY 2 O.S. 2011, Section 2-3, is
2 amended to read as follows:

3 Section 2-3. ~~A. The at-large member appointed by the Governor,~~
4 ~~pursuant to Section 2-1 of this title, shall be the President of the~~
5 ~~State Board Commissioner of Agriculture and shall be appointed by~~
6 ~~the Governor, with the advice and consent of the Senate. The~~
7 ~~Commissioner shall~~ serve at the pleasure of the Governor ~~and may be~~
8 ~~removed or replaced without cause. Compensation for the~~
9 ~~Commissioner shall be determined pursuant to Section 3601.2 of Title~~
10 ~~74 of the Oklahoma Statutes.~~

11 ~~B. The President shall be the executive officer of the Board~~
12 ~~and, in the absence of the Board, shall, subject to approval of the~~
13 ~~Board, perform all of the duties imposed by law.~~

14 ~~C. The Board shall elect a Secretary who shall not be a member~~
15 ~~of the Board. The Board shall fix the duties of the person~~
16 ~~appointed.~~

17 SECTION 5. AMENDATORY 2 O.S. 2011, Section 2-4, as last
18 amended by Section 1, Chapter 20, O.S.L. 2015 (2 O.S. Supp. 2017,
19 Section 2-4), is amended to read as follows:

20 Section 2-4. A. The ~~State Board~~ Commissioner of Agriculture
21 shall have the power to:

22 1. Adopt and prescribe the use of a seal, ~~which shall be in the~~
23 ~~custody of the Secretary of the Board;~~

1 2. Promulgate rules necessary, expedient, or appropriate to the
2 performance, enforcement, or carrying out of any of the purposes,
3 objectives, or provisions of the Oklahoma Agricultural Code;

4 3. Initiate and prosecute administrative, civil, or criminal
5 actions and proceedings necessary under the Oklahoma Agricultural
6 Code;

7 4. Appoint authorized agents to make inspections or
8 investigations and to perform other services for the ~~Board~~ Oklahoma
9 Department of Agriculture, Food, and Forestry or any division of the
10 ~~Oklahoma Department of Agriculture, Food, and Forestry;~~

11 5. Consolidate any of the divisions established by the Oklahoma
12 Agricultural Code, transfer any of the functions or activities to
13 another division, place additional functions or activities in a
14 division, establish new divisions, and create new or additional
15 positions in the Department, when conducive to a more efficient
16 administration and enforcement of laws pertaining to agriculture;

17 6. Sell, exchange, or dispose of property;

18 7. Have jurisdiction over all matters affecting animal
19 industry, animal health, and animal quarantine;

20 8. Issue stop-sale and stop-use orders and quarantines;

21 9. Employ, appoint, or contract and fix the duties and
22 compensation of the director of each division of the Department and
23 other personnel, either on a full-time, part-time, or contractual
24 basis, ~~as deemed necessary by the Board;~~

1 10. Fix the qualifications of the personnel in the Department;

2 11. Accept and use grants of money and other property from any
3 source;

4 12. Advise, consult, cooperate, and enter into agreements or
5 contracts with persons as defined in the Oklahoma Agricultural Code;

6 13. Coordinate with the federal government and other states on
7 matters pertaining to agriculture;

8 14. Revoke, suspend, or deny for up to one (1) year, any
9 license, permit, or charter issued by the ~~Board~~ Department if the
10 ~~Board~~ Department finds any violations of the Oklahoma Agricultural
11 Code or any rule of the ~~Board~~ Department;

12 15. Adopt a master plan and promulgate rules for the protection
13 of state-owned and private forestry, grazing, and other lands from
14 damage by fire and for suppressing fires on lands. In carrying out
15 the master plan the ~~Board~~ Department is authorized to enter into
16 contractual agreements with the federal government, local political
17 subdivisions of the state, individuals, private organizations,
18 companies, and corporations for protection and for the suppression
19 of fires and to expend funds as available for these services. To
20 effectuate the purposes of the Oklahoma Agricultural Code, the ~~Board~~
21 Department is authorized to enter into contractual agreements with
22 private landowners for the protection and suppression of fires,
23 provided that the private landowners reimburse the ~~Board~~ Department

1 for actual expenses incurred in the protection and suppression of
2 fires on privately owned lands;

3 16. Have jurisdiction over all matters affecting agriculture as
4 contained and set out in the Oklahoma Agricultural Code, which have
5 not been expressly delegated to another state or federal agency and
6 be responsible for fully implementing and enforcing the laws and
7 rules within its jurisdictional areas of environmental
8 responsibility.

9 a. The Department of Environmental Quality shall have
10 environmental jurisdiction over:

- 11 (1) commercial manufacturers of fertilizers, grain
12 and feed products, and chemicals, and over
13 manufacturing of food and kindred products,
14 tobacco, paper, lumber, wood, textile mill, and
15 other agricultural products,
16 (2) slaughterhouses, but not including feedlots at
17 these facilities, and
18 (3) aquaculture and fish hatcheries, including, but
19 not limited to, discharges of pollutants and
20 storm water to waters of the state, surface
21 impoundments and land application of wastes and
22 sludge, and other pollution originating at these
23 facilities.
24

b. Facilities storing grain, feed, seed, fertilizer, and agricultural chemicals that are required by federal National Pollutant Discharge Elimination System (NPDES) regulations to obtain a permit for storm water discharges shall only be subject to the jurisdiction of the Department of Environmental Quality with respect to storm water discharges;

17. Have jurisdiction over all matters affecting the importation, health, and quarantining of exotic livestock;

18. Prescribe forms of application, certification, licenses, charters, and other forms and blanks as may be necessary to carry out the provisions of the Oklahoma Agricultural Code;

19. Stagger throughout the year the renewal dates for any licenses or permits issued by the Department pursuant to the provisions of the Oklahoma Agricultural Code by notifying licensees in writing of the expiration and renewal date being assigned to the licensee and permittee and by making an appropriate adjustment in the fee charged for the license or permit;

20. Establish and collect fees for licenses, permits, charters, and services provided. The fees shall be promulgated in accordance with the Administrative Procedures Act and shall be fair and equitable to all parties concerned;

21. Establish planting and harvesting seasons for the purpose of meeting the maximum driving and on-duty time exemptions set forth

1 in the National Highway System Designation Act of 1995. The ~~Board~~
2 Department shall notify the United States Secretary of
3 Transportation of the seasons;

4 22. Fix and adopt official standards for grading and
5 classifying any agricultural commodity, meat, or meat product
6 prepared, produced, or distributed in Oklahoma;

7 23. Promulgate rules, make investigations, and conduct hearings
8 for the purpose of making inspection compulsory on any agricultural
9 commodity and designate the shipping points where compulsory
10 inspection applies;

11 24. Inspect agricultural commodities, at any time, upon request
12 of any financially interested party or when necessary and to issue
13 certificates showing the quality and condition of the commodities at
14 the time of the inspection;

15 25. Grade meat or meat products upon the request of any packing
16 plant in Oklahoma. The packing plant shall be required to pay the
17 cost of services, including the compensation and expenses of
18 personnel employed to perform the actual grading;

19 26. Apply to the district court for a temporary or permanent
20 injunction or any other remedy restraining any person from violating
21 the Oklahoma Agricultural Code;

22 27. Extend and implement the powers and provisions granted by
23 the Oklahoma Agricultural Code to all programs administered by the
24

1 Department regardless of whether the statutes creating the program
2 are codified in this title;

3 28. Increase its efforts to ensure the safety and quality of
4 food and food products for wholesalers and retail sales in this
5 state and shall include, but not be limited to, inspections of
6 retailers and wholesalers to ensure compliance with all federal and
7 state certification standards;

8 29. Exercise all incidental powers which are necessary and
9 proper to implement and administer the purposes of the Oklahoma
10 Agricultural Code;

11 30. Accept upon behalf of the Department any gift or donation
12 of property, including but not limited to monetary gifts;

13 31. Promulgate rules regarding prescribed burning and smoke
14 management;

15 32. Enter into written leases or lease-purchase agreements to
16 acquire equipment, furnishings, supplies and other items necessary
17 for the operation of the Oklahoma Department of Agriculture, Food,
18 and Forestry Agriculture Laboratory;

19 33. Exercise all incidental powers and promulgate rules,
20 procedures and forms which are necessary and proper to implement,
21 administer and enforce the Oklahoma Scrap Metal Dealers Act;

22 34. Promulgate rules to ensure state control of any federal
23 program relating to on-farm fruit and vegetable production
24 inspections and regulation; and

1 35. Develop a pollinator protection plan to promote the health
2 of and mitigate the risks to honeybees and other managed
3 pollinators.

4 B. 1. If upon inspection or investigation, or whenever the
5 Oklahoma Department of Agriculture, Food, and Forestry determines
6 that there are reasonable grounds to believe that any person is in
7 violation of any part of the Oklahoma Environmental Quality Code
8 which is the responsibility and jurisdiction of the Oklahoma
9 Department of Agriculture, Food, and Forestry, any rule promulgated
10 by the ~~State Board of Agriculture~~ Department, or of any order,
11 permit, certificate, registration, charter, or license issued by the
12 ~~Board~~ Department, the Department may give written notice to the
13 alleged violator of the specific violation and of the alleged
14 violator's duty to correct the violation immediately or within a set
15 time period or both and that the failure to do so shall result in
16 administrative fines or penalties.

17 2. Whenever the Department finds that an emergency exists
18 requiring immediate action to protect the public health, welfare, or
19 the environment, the ~~President of the State Board~~ Commissioner of
20 Agriculture may without notice or hearing issue an order, effective
21 upon issuance, reciting the existence of an emergency and requiring
22 that action be taken as specified in the order to meet the
23 emergency. Any person to whom an order is directed shall comply
24 immediately but may request an administrative enforcement hearing

1 within fifteen (15) days after the order is served. The hearing
2 shall be held by the Department within ten (10) days after receipt
3 of the request. On the basis of the hearing record, the ~~President~~
4 ~~of the Board~~ Commissioner shall sustain or modify the original
5 order.

6 SECTION 6. REPEALER 2 O.S. 2011, Section 2-2, as amended
7 by Section 1, Chapter 7, O.S.L. 2012 (2 O.S. Supp. 2017, Section 2-
8 2), is hereby repealed.

9 SECTION 7. This act shall become effective January 14, 2019.

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11 COMMITTEE REPORT BY: COMMITTEE ON RULES, dated 02/28/2018 - DO PASS,
12 As Amended and Coauthored.
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