

LEGISLATIVE BILL 145

Approved by the Governor March 30, 1987

Introduced by Weihing, 48; Baack, 47

AN ACT relating to agriculture; to adopt the Dry Bean Resources Act; and to declare an emergency.
Be it enacted by the people of the State of Nebraska,

Section 1. This act shall be known and may be cited as the Dry Bean Resources Act.

Sec. 2. The Legislature finds and declares that it is in the public welfare of the State of Nebraska that growers and processors of dry beans be permitted and encouraged to develop, carry out, and participate in programs of research, education, and promotion of dry beans and bean products. It is the purpose of the Dry Bean Resources Act to provide the authorization and the necessary procedures by which dry bean growers and processors in this state may finance programs to achieve the purposes expressed in this section.

Sec. 3. For purposes of the Dry Bean Resources Act, unless the context otherwise requires, the definitions found in sections 4 to 10 of this act shall be used.

Sec. 4. Commercial channels shall mean the sale of dry beans for any use to any commercial buyer, dealer, processor, or cooperative or to any person who resells such dry beans or any product produced from such dry beans.

Sec. 5. Commission shall mean the Dry Bean Commission.

Sec. 6. Dry bean shall mean any dry edible bean.

Sec. 7. First purchaser shall mean any person, public or private corporation, association, or partnership buying, accepting for shipment, or otherwise acquiring dry beans from a grower and shall include, but not be limited to, a mortgagee, pledgee, lienor, or other person having a claim against the grower when the actual or constructive possession of such dry beans is taken as part payment or in satisfaction of the mortgage, pledge, lien, or claim.

Sec. 8. Grower shall mean any landowner personally engaged in growing dry beans, a tenant of a landowner personally engaged in growing dry beans, or

both the owner and tenant jointly and shall include, but not be limited to, any person, partnership, association, corporation, cooperative, trust, or sharecropper or any other business unit, device, or arrangement.

Sec. 9. Processor shall mean any person or business or a representative thereof who receives, stores, ships, or otherwise handles dry beans.

Sec. 10. Sale shall include, but not be limited to, any pledge or mortgage of dry beans after harvest to any person.

Sec. 11. There is hereby created the Dry Bean Commission which shall be composed of nine members, two of whom shall be selected by the commission and seven of whom shall be appointed by the Governor with the consent of the Legislature. Six members shall be growers who (1) are citizens of Nebraska, (2) are at least twenty-one years of age, (3) have actually been engaged in growing dry beans in this state for at least three years, and (4) derive a substantial portion of their income from growing dry beans. Three members shall be dry bean processors who have been in business in Nebraska for at least three years, and the Director of the University of Nebraska Panhandle Research and Extension Center shall be an ex officio member but shall have no vote in commission matters.

Sec. 12. (1) One grower shall be appointed from each of the following four districts:

(a) District 1 which shall consist of the counties of Sioux, Dawes, Sheridan, and Box Butte;

(b) District 2 which shall consist of the county of Scotts Bluff;

(c) District 3 which shall consist of the counties of Banner, Morrill, Kimball, Cheyenne, Garden, and Deuel; and

(d) District 4 which shall consist of the remaining counties in which dry bean production occurs in the state.

(2) The processor members of the commission shall be appointed by the Governor. Insofar as possible, the geographic locations of such appointed members shall be representative of the Nebraska dry bean industry. Any processor may place his or her name on a candidacy list for appointment as an initial member of the commission by written notice to the Governor and for subsequent appointments by written notice to the commission.

Sec. 13. (1) Within sixty days after the effective date of this act, the seven members specified in section 12 of this act shall be appointed by the

Governor. Within thirty days after the appointment of the initial commission, the commission shall conduct its first regular meeting. At the first regular meeting the commission shall select and appoint two members to the commission. Such appointments shall be growers appointed at large with one member representing districts 1 and 2 and one member representing districts 3 and 4.

(2) Members shall be appointed on a nonpartisan basis. Any grower candidate may place his or her name on a candidacy list for appointment as an initial member of the commission for the district in which he or she resides by filing a petition signed by at least twenty-five resident bean growers of such district with the Nebraska Dry Bean Growers Association and for subsequent appointments by filing such petitions and notices with the commission. The Governor shall make appointments from the district candidacy list unless there are no names on such list.

Sec. 14. (1) The initial term of office for members of the commission shall be as follows: Two district members and one processor shall be appointed for one year; one district member, one processor, and one member at large selected by the commission shall be appointed for two years; and one district member, one processor, and one member at large selected by the commission shall be appointed for three years.

(2) Except for the persons appointed to the initial commission, the term of a member shall be three years. No member shall serve more than two consecutive three-year terms.

Sec. 15. Whenever a vacancy occurs on the commission for any reason, the Governor shall appoint a person with the same qualifications as the initial appointee unless the vacant position is that of a member at large, in which case the appointment to fill such vacancy shall be made by the commission.

Sec. 16. A member of the commission shall be removed for ceasing to (1) be a resident of the state, (2) live in the district from which he or she was appointed, (3) in the case of a grower member, be actually engaged in the growing of dry beans in the state, or (4) in the case of a processor member, be actually engaged in the processing or shipping of dry beans in the state.

Sec. 17. The commission shall elect from its members a chairperson and such other officers as may be necessary. The commission shall meet at least once every three months and at such other times as called by

the chairperson or by any three members of the commission. The members shall receive no compensation for their services, but appointed members shall receive reimbursement for actual, necessary, and reasonable expenses incurred in the discharge of their official duties as provided in sections 84-306.01 to 84-306.05 for state employees.

Sec. 18. The commission may appoint and fix the salary of such support staff and employees, who shall serve at the pleasure of the commission, as may be required for the proper discharge of the functions of the commission.

Sec. 19. The commission shall have the following powers and duties:

(1) To adopt and devise a dry bean program consisting of research, education, advertising, publicity, and promotion to increase total consumption of dry beans on a state, national, and international basis;

(2) To prepare and approve a budget consistent with limited receipts and the scope of the dry bean program;

(3) To adopt and promulgate reasonable rules and regulations necessary to carry out the dry bean program;

(4) To procure and evaluate data and information necessary for the proper administration and operation of the dry bean program;

(5) To employ personnel and contract for services which are necessary for the proper operation of the dry bean program;

(6) To establish a means whereby the grower and processor of dry beans has the opportunity at least annually to offer his or her ideas and suggestions relative to commission policy for the coming year;

(7) To authorize the expenditure of funds and contracting of expenditures to conduct proper activities of the program;

(8) To bond such persons as may be necessary in order to insure adequate protection of funds;

(9) To keep minutes of its meetings and other books and records which will clearly reflect all of the acts and transactions of the commission and to keep such records open to examination by any grower or processor participant during normal business hours;

(10) To prohibit any funds collected by the commission from being expended directly or indirectly to promote or oppose any candidate for public office or to influence state legislation. The board shall not expend

more than twenty-five per cent of its annual budget to influence federal legislation;

(11) To establish an administrative office at such place in the state as may be suitable for the proper discharge of the functions of the commission; and

(12) To adopt and promulgate rules and regulations to carry out the Dry Bean Resources Act.

Sec. 20. The commission shall not:

(1) Engage in marketing of dry beans or any activity which would result in the formation of a marketing order;

(2) Be a party to a procedure which includes price setting or production quotas; and

(3) Purchase, construct, or otherwise obtain title to its own administrative office but shall be limited to leasing state or commercial office space.

Sec. 21. Beginning August 1, 1987, there shall be paid to the commission a fee of six cents per hundredweight upon all dry beans grown in the state during 1987 and thereafter and sold through commercial channels. Beginning January 1, 1989, the commission may, whenever it determines that the fees provided by this section are yielding more or less than is required to carry out the intent and purposes of the Dry Bean Resources Act, reduce or increase such fee for such period as it shall deem justifiable, but not less than one year and not to exceed ten cents per hundredweight. Two-thirds of the fee levied under this section shall be paid by the grower at the time of sale or delivery and shall be collected by the first purchaser. The first purchaser shall pay the remaining one-third of the fee. No dry beans shall be subject to the fee more than once.

Sec. 22. In the case of a pledge or mortgage of dry beans as security for a loan under the federal price support program, the fee shall be deducted from the proceeds of such loan at the time the loan is made.

Sec. 23. The fee provided for by section 21 of this act shall be deducted, as provided by the Dry Bean Resources Act, whether such dry beans are stored or marketed in this state or any other state. The commission may enter into reciprocal agreements with other states for the collection of such fee.

Sec. 24. The fee imposed by section 21 of this act shall not apply to the sale of dry beans to the federal government for ultimate use or consumption by the people of the United States when the State of Nebraska is prohibited from imposing such fee by the Constitution of the United States and laws enacted pursuant thereto.

Sec. 25. (1) The first purchaser at the time of settlement shall deduct the dry bean fee and shall maintain the necessary record of the fee for each purchase of dry beans on the grain settlement form or check stub showing payment to the grower for each purchase. Such records maintained by the first purchaser shall provide the following information: (a) Name and address of the grower and seller; (b) the date of the purchase; (c) the number of hundredweight of dry beans sold; and (d) the amount of fees collected on each purchase. Such records shall be open for inspection and audit during the normal business hours observed by the purchaser. The inspection and audit shall be conducted by qualified and independent representatives authorized by the commission.

(2) The commission shall contract with an independent agency or organization to collect the fee. The first purchaser shall render and have on file with such independent collection agency by the last day of each January, April, July, and October, on forms prescribed by the commission, a statement of the number of hundredweight of dry beans purchased in Nebraska for the preceding three months. The independent collection agency shall keep first purchaser statements confidential and report only the total of all statements to the commission for the preceding three months. Purchaser records and other such statements shall be confidential and shall not be released to any person or agency, except that the Attorney General shall have access to such statements during a bona fide investigation. At the time the statement is filed, the purchaser shall pay and remit to the independent collection agency the fee as provided for in section 21 of this act for the dry beans purchased in the preceding three months.

Sec. 26. A grower who has sold dry beans and has had an assessment deducted from the sale price may by written application to the commission secure a refund of the amount deducted. The commission shall notify first purchasers of grower refunds at the end of each quarter, at which time the first purchaser may request a refund. First purchaser refunds shall only be on those beans that growers receive a refund on. The grower shall have thirty days from the date of sale to request a refund. The refund shall be payable by the commission upon application within ninety days after receipt of the refund request. Each application for refund by a grower shall have attached thereto proof of the assessment deducted.

Sec. 27. The commission may contract with the proper local, state, or national organizations, public or private, in carrying out the purposes of the Dry Bean Resources Act.

Sec. 28. The commission shall make and publish an annual report at least thirty days prior to January 1 of each year which shall set forth in detail the income received from the dry bean assessment for the previous year and shall include:

(1) The expenditure of all funds by the commission during the previous year for the administration of the Dry Bean Resources Act;

(2) The action taken by the commission on all contracts requiring the expenditure of funds by the commission;

(3) Copies of all such contracts;

(4) Detailed explanation of all programs relating to the discovery, promotion, and development of bean products and industries for the utilization of dry beans, the direct expense associated with each program, and copies of such programs if in writing; and

(5) The name and address of each member of the commission and a copy of all rules and regulations adopted and promulgated by the commission.

The report shall be available to the public upon request and a summary of such report shall be sent to each grower and first purchaser subject to the checkoff.

Sec. 29. The State Treasurer shall establish in the treasury of the State of Nebraska a fund to be known as the Dry Bean Development, Utilization, Promotion, and Education Fund to which shall be credited funds collected by the commission pursuant to the Dry Bean Resources Act. The fund shall be expended for the administration of such act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1269.

Sec. 30. The commission shall not set up research or development units or agencies of its own but shall limit its activity to cooperation and contracts with the Institute of Agriculture and Natural Resources of the University of Nebraska and other local, state, or national organizations, public or private, in carrying out the purposes of the Dry Bean Resources Act.

Sec. 31. Any person violating the Dry Bean Resources Act shall be guilty of a Class III misdemeanor.

Sec. 32. Since an emergency exists, this act

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shall be in full force and take effect, from and after its passage and approval, according to law.