

GRAIN SORGHUM RESOURCES ACT

- Administration:** This Act is administered by the Nebraska Grain Sorghum Development, Utilization and Marketing Board, State Office Building, 301 Centennial Mall South, Lincoln, NE, 68509. Telephone: (402) 471-4276.
- Revisions:** The provisions of this Act were revised during the 2011 session of the Nebraska Legislature.
- Rules:** A regulation has been promulgated by the above named board under this Act, known as Title 18, Chapter 1, Nebraska Administrative Code - Grain Sorghum Development, Utilization and Marketing Board Rules.

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2-4001. Act, how cited. Sections 2-4001 to 2-4020 shall be known and may be cited as the Grain Sorghum Resources Act.

2-4002. Terms, defined. For purposes of the Grain Sorghum Resources Act, unless the context otherwise requires:

(1) Board means the Grain Sorghum Development, Utilization, and Marketing Board;

(2) Commercial channels means the sale of grain sorghum for any use to any commercial buyer, dealer, processor, or cooperative or to any person, public or private, who resells any grain sorghum or product produced from grain sorghum;

(3) Delivered or delivery means receiving grain sorghum for any use, except for storage, and includes receiving grain sorghum for consumption, for utilization, or as a result of a sale in the State of Nebraska;

(4) First purchaser means any person, public or private corporation, association, partnership, or limited liability company buying, accepting for shipment, or otherwise acquiring the property rights in or to grain sorghum from a grower and includes a mortgagee, pledgee, lienor, or other person, public or private, having a claim against the grower when the actual or constructive possession of such grain sorghum is taken as part payment or in satisfaction of such mortgage, pledge, lien, or claim;

(5) Grower means any landowner personally engaged in growing grain sorghum, a tenant of the landowner personally engaged in growing grain sorghum, and both the owner and tenant jointly and includes a person, partnership, limited liability company, association, corporation, cooperative, trust, sharecropper, and other business unit, device, or arrangement; and

(6) Sale includes any pledge or mortgage of grain sorghum after harvest to any person, public or private.

2-4003. Intent and purpose of act. It is declared to be in the interest of the public welfare that the producers of grain sorghum be permitted and encouraged to develop, carry out, and participate in programs of research, education, market development, and promotion. It is the purpose of sections 2-4001 to 2-4020 to provide the authorization and to prescribe the necessary procedures whereby grain sorghum producers in this state may finance programs to achieve the purposes expressed in this section.

2-4004. Board; members; membership districts; officers; terms; vacancy; how filled.

(1) The board shall be composed of grower members who (a) are citizens of Nebraska, (b) are at least twenty-one years of age, and (c) derive a portion of their income from growing grain sorghum. The Director of Agriculture and the vice chancellor of the University of Nebraska Institute of Agriculture and Natural Resources shall be ex officio members of the board but shall have no vote in board matters.

(2) Except as provided in section 2-4006 or 2-4007, the members shall be appointed as follows:

(a) One member shall be appointed by the Governor from each of the following districts:

(i) District 1: The counties of Cedar, Dixon, Dakota, Wayne, Thurston, Stanton, Cuming, Burt, Colfax, Dodge, Washington, Douglas, Butler, Saunders, Sarpy, Seward, Saline, Lancaster, Cass, Otoe, Jefferson, Gage, Johnson, Nemaha, Pawnee, and Richardson;

(ii) District 2: The counties of Knox, Antelope, Pierce, Madison, Boone, Platte, Nance, Merrick, Polk, Hamilton, York, Adams, Clay, Fillmore, Webster, Nuckolls, and Thayer;

(iii) District 3: The counties of Keya Paha, Boyd, Brown, Rock, Holt, Blaine, Loup, Garfield, Wheeler, Custer, Valley, Greeley, Sherman, Howard, Dawson, Buffalo, Hall, Gosper, Phelps, Kearney, Furnas, Harlan, and Franklin; and

(iv) District 4: The counties of Sioux, Dawes, Box Butte, Sheridan, Cherry, Scotts Bluff, Banner, Kimball, Morrill, Cheyenne, Garden, Deuel, Grant, Hooker, Thomas, Arthur, McPherson, Logan, Keith, Perkins, Lincoln, Chase, Hayes, Frontier, Dundy, Hitchcock, and Red Willow; and

(b) Three members shall be appointed from the state at large, two of whom shall be appointed by the Governor and one appointed by the board. When making at-large appointments, the Governor and the board shall, to the extent practicable, seek to achieve an equitable representation of grain sorghum producers in terms of the geographic distribution of grain sorghum production in the state. No more than two at-large members may reside in a single district as defined by subdivision (a) of this subsection.

(3) The board shall elect from its members a chairperson, treasurer, and such other officers as may be necessary. Except as provided in section 2-4006, the term of office for members of the board shall be three years and until their successors are appointed and qualified.

(4) Whenever a vacancy occurs on the board for any reason, the remaining board members shall appoint an individual to fill such vacancy from the district in which the vacancy exists. If the vacant position is that of an at-large member, the appointment to fill such vacancy shall be made at large subject to subdivision (2)(b) of this section.

2-4005. Board; appointment of members; procedure. Members shall be appointed to the board on a nonpartisan basis. Candidates for appointment to the board may place their names on a candidacy list for the respective district or for at-large appointment by submitting to the board an application for gubernatorial appointment obtained from the Governor's office, a statement of interest in serving on the board, two letters of endorsement of the candidate's appointment by grain sorghum growers, and documentation substantiating qualification to serve as a member of the board. The board may publish guidelines regarding the forms of documentation suitable to substantiate qualification to serve on the board. The board shall perform a review of each candidate's qualification to serve and shall without undue delay forward all applications for appointment to the Governor along with the board's assessment of the candidate's qualification to serve the appointment. Qualified individuals residing within their district shall be eligible for nomination as candidates from such district, and qualified individuals residing in the state shall be eligible for at-large appointment.

2-4006. Board; membership; transitional provisions. The member serving district 1 as it existed prior to May 18, 2011, shall assume the role of serving district 1 as defined by section 2-4004, and his or her term shall expire on July 1, 2014. The member serving district 3 as it existed prior to May 18, 2011, shall assume the role of serving new district 2 as defined by section 2-4004, and his or her term shall expire on July 1, 2013. The member serving as the at-large member prior to May 18, 2011, shall assume the role of serving district 3 as defined by section 2-4004, and his or her term shall expire on July 1, 2013. The Governor shall appoint a member to serve district 4 as defined by section 2-4004, and the term of such member shall expire on July 1, 2012. The member serving district 2 as it existed prior to May 18, 2011, shall assume the role of serving as the at-large member appointed by the board as defined by section 2-4004, and his or her term shall expire on July 1, 2012. The member serving district 4 as it existed prior to May 18, 2011, shall assume the role of serving as an at-large member appointed by the Governor as defined by section 2-4004, and the term of such member shall expire on July 1, 2013. The member serving district 5 as it existed prior to May 18, 2011, shall assume the role of serving as an at-large member appointed by the Governor as defined by section 2-4004, and the term of such member shall expire on July 1, 2014.

2-4007. Board; responsibility; powers. The board shall be responsible for the administration of all subsequent appointments and may adopt rules and regulations to carry out such responsibility. The composition of the board as defined by section 2-4004 shall continue until such time as the board determines that the districts and at-large membership as defined by such section are incompatible with an equitable representation of producers of grain sorghum due to changing geographic distribution of grain sorghum production in the state, changing marketing patterns, or availability of

qualified individuals to serve as board members. The board may, from time to time as appropriate, by rule and regulation, redesignate districts and the number of at-large members to provide for an equitable representation of producers of grain sorghum, except that the number of appointed members of the board shall be either seven or five and the number of districts shall be no greater than six nor fewer than three.

2-4008. Board; voting members; expenses. All voting members of the board shall be entitled to actual and necessary expenses, as provided for in sections 81-1174 to 81-1177 for state employees, while attending meetings of the board, or while engaged in the performance of official responsibilities as determined by the board.

2-4009. Board; removal of member; grounds. A member of the board shall be removable for ceasing to (1) be a resident of the state, (2) live in the district from which appointed, or (3) be actually engaged in growing grain sorghum in the state.

2-4010. Board; meetings. The board shall meet a least once every three months and at such other times as called by the chairperson or by any three members of the board.

2-4011. Board; duties and responsibilities. The duties and responsibilities of the board shall be to implement and carry out the grain sorghum program and to the extent applicable shall include the following:

(1) To develop and direct any grain sorghum development, utilization, and marketing program. Such program may include a program to make grants and enter into contracts for research, accumulation of data, and construction of ethanol production facilities;

(2) To prepare and approve a budget consistent with limited receipts and the scope of the grain sorghum commodity program;

(3) To adopt and promulgate reasonable rules and regulations;

(4) To procure and evaluate data and information necessary for the proper administration and operation of the grain sorghum commodity program;

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

(6) To establish a means whereby any grower of grain sorghum has the opportunity at least annually to offer his or her ideas and suggestions relative to board policy for the coming year;

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

(8) To bond the treasurer and such other persons necessary 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 board and to keep these records open to examination by any grower-participant during normal business hours;

(10) To prohibit any funds collected by the board 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 percent of its annual budget to influence federal legislation; and

(11) To make refunds for overpayments of fees according to rules and regulations which may be adopted and promulgated by the board pursuant to this section.

2-4012. Sale of grain sorghum; fee; adjustment. (1) After August 31, 1981, there shall be paid to the board a fee of not to exceed one cent per hundredweight upon all grain sorghum sold through commercial channels in the State of Nebraska or delivered in the State of Nebraska. The fee shall be paid by the grower at the time of sale or delivery and shall be collected by the first purchaser. Under the provisions of the Grain Sorghum Resources Act, no grain sorghum shall be subject to the fee more than once.

(2) The board may, whenever it shall determine that the fees provided by this section are yielding more than is required to carry out the intent and purposes of the Grain Sorghum Resources Act, reduce such fees for such period as it shall deem justified, but not less than one year. If the board, after reducing such fees, finds that sufficient revenue is not being produced by such reduced fees, it may restore in full or in part such fees not to exceed the amount authorized by subsection (1) of this section.

2-4013. Pledge or mortgage; grain sorghum used as security; fee; refund; procedure. In the case of a pledge or mortgage of grain sorghum 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. If, within the life of the loan, plus thirty days after the collection of a fee for grain sorghum that is mortgaged as a security for a loan under the federal price support program or other government agricultural loan programs, the grower decides to purchase the grain sorghum and use it as feed, the grower shall be entitled to a refund of the checkoff fee previously paid. The refund shall be payable by the board upon the grower's written application to the board for a refund of the amount deducted. Each application for a refund by a grower shall have attached thereto proof of the tax deducted.

2-4014. Fee; when assessed. The fee, provided for by section 2-4012, shall be deducted, as provided by sections 2-4001 to 2-4020, whether such grain sorghum is stored in this state or any other state.

2-4015. Fee; when not applicable. The fee imposed by section 2-4012 shall not apply to the sale of grain sorghum 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.

2-4016. Purchaser; deduct fee; maintain records; public inspection; quarterly statement. (1) The purchaser, at the time of settlement, shall deduct the grain sorghum fee and shall maintain the necessary record of the fee for each purchase of grain sorghum on the grain settlement form or check stub showing payment to the grower for each purchase. Such records maintained by the 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 hundredweights of grain sorghum sold; and (d) the amount of fees collected on each purchase. Such records shall be open for inspection during normal business hours observed by the purchaser.

(2) The purchaser shall render and have on file with the board by the last day of each January, April, July, and October, on forms prescribed by the board, a statement of the number of hundredweights of grain sorghum purchased in Nebraska during the preceding quarter. At the time the statement is filed, the purchaser shall pay and remit to the board the fee as provided for in section 2-4012.

2-4017. Board; annual report; contents. The board shall make and publish an annual report on or before January 1 of each year, which report shall set forth in detail the income received from the grain sorghum assessment for the previous year and shall include:

(1) The expenditure of all funds by the board during the previous year for the administration of sections 2-4001 to 2-4020;

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

(3) Copies of all such contracts;

(4) A detailed explanation of all programs relating to the discovery, promotion, and development of markets and industries for the utilization of grain sorghum, 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 board and a copy of all rules and regulations promulgated by the board.

Such report shall be available to the public upon request.

2-4018. Grain Sorghum Development, Utilization, and Marketing Fund; created; purpose; investment. The State Treasurer shall establish in the state treasury a fund to be known as the Grain Sorghum Development, Utilization, and Marketing Fund, to which fund shall be credited all fees collected by the board pursuant to the Grain Sorghum Resources Act. Such fund shall be expended solely for the administration of the act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

2-4019. Board; cooperate with University of Nebraska and other organizations; purpose. The board shall not set up research or development units or agencies of its own, but shall limit its activity to cooperation and contracts with the University of Nebraska Institute of Agriculture and Natural Resources, and other proper local, state, or national organizations, public or private, in carrying out the purposes of sections 2-4001 to 2-4020.

2-4020. Violations; penalty. Any person violating any of the provisions of sections 2-4001 to 2-4020 shall be guilty of a Class III misdemeanor.

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