

## DRY BEAN RESOURCES ACT

- Administration:** This Act is administered by the Dry Bean Resources Commission, UNL Panhandle Station, 4502 Avenue I, Scottsbluff, NE 69361. Telephone: (308) 632-1312.
- Revisions:** The provisions of the Act were last revised during the 2011 session of the Nebraska Legislature.
- Rules:** A regulation has been promulgated under this Act known as Title 84, Chapter 1, Nebraska Administrative Code – Dry Bean Resources Commission Rules.

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2-3735. Act, how cited. Sections 2-3735 to 2-3765 shall be known and may be cited as the Dry Bean Resources Act.

2-3736. Purpose of act. 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.

2-3737. Definitions, where found. For purposes of the Dry Bean Resources Act, unless the context otherwise requires, the definitions found in sections 2-3738 to 2-3744 shall be used.

2-3738. Commercial channels, defined. 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.

2-3739. Commission, defined. Commission shall mean the Dry Bean Commission.

2-3740. Dry bean, defined. Dry bean shall mean any dry edible bean.

2-3741. First purchaser, defined. First purchaser shall mean any person, public or private corporation, association, partnership, or limited liability company, 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.

2-3742. Grower, defined. 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, limited liability company, association, corporation, cooperative, trust, or sharecropper or any other business unit, device, or arrangement.

2-3743. Processor, defined. Processor shall mean any person or business or a representative thereof who receives, stores, ships, or otherwise handles dry beans.

2-3744. Sale, defined. Sale shall include, but not be limited to, any pledge or mortgage of dry beans after harvest to any person.

2-3745. Dry Bean Commission; created; members; qualifications. 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. Commission members shall be appointed on a nonpartisan basis. 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.

2-3746. Commission; grower members; districts; processor members. (1) The Governor shall appoint one grower member 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 commission shall appoint two grower members to the commission, one of whom resides within district 1 or 2 who shall represent districts 1 and 2 and one of whom resides within district 3 or 4 who shall represent districts 3 and 4. Members serving as representatives of such districts on May 18, 2011, shall continue as members of the commission until the end of their terms and until their successors are appointed and qualified and, except as provided in section 2-3748, shall be eligible for reappointment.

(3) The three 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 by written notice to the commission.

2-3747. Commission; appointment of grower member; candidacy list; petition. Any grower may place his or her name on a candidacy list for appointment as a grower member of the commission by filing a petition signed by at least ten resident bean growers (1) from the district in which he or she resides for an appointment under subsection (1) of section 2-3746 or (2) from the district in which he or she resides or the other district to be represented for an appointment under subsection (2) of section 2-3746. The petition shall be filed with the commission. The Governor and the commission shall make appointments from the candidacy list unless there are no names on the list.

2-3748. Commission; members; terms. The term of a member of the commission shall be three years and until his or her successor is appointed and qualified. No member shall serve more than three consecutive three-year terms.

2-3749. Commission; vacancy. 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 appointed by the commission, in which case the appointment to fill such vacancy shall be made by the commission.

2-3750. Commission; member; removal. 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.

2-3751. Commission; officers; meetings; expenses. 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 81-1174 to 81-1177 for state employees.

2-3752. Commission; employees. 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.

2-3753. Commission; powers and duties. 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 percent 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.

2-3754. Commission; prohibited acts. 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.

2-3755. Dry beans; fee; adjustment; payment. 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.

2-3756. Pledge or mortgage under federal program; deduction of fee. 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.

2-3757. Fee; collection. The fee provided for by section 2-3755 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.

2-3758. Fee; when prohibited. The fee imposed by section 2-3755 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.

2-3759. First purchaser; deduct fee; maintain records; inspection and audit; contract for collection of fee; quarterly statement; confidentiality. (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 2-3755 for the dry beans purchased in the preceding three months.

2-3760. Refund; procedure. 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.

2-3761. Commission; contracts authorized. 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.

2-3762. Commission; annual report; contents. 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.

2-3763. Dry Bean Development, Utilization, Promotion, and Education Fund; created; use; investment. 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 fund 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 the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

2-3764. Commission; cooperate with University of Nebraska and other organizations; purpose. 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 University of Nebraska Institute of Agriculture and Natural Resources and other local, state, or national organizations, public or private, in carrying out the purposes of the Dry Bean Resources Act.

2-3765. Violations; penalty. Any person violating the Dry Bean Resources Act shall be guilty of a Class III misdemeanor.

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