

ENGROSSED HOUSE
BILL NO. 2460

BY: BENSON and COTNER of the
HOUSE

and

KERR of the SENATE

AN ACT RELATING TO AGRICULTURE; CREATING THE BOLL
WEEVIL ERADICATION ACT; DEFINING TERMS; PROVIDING
FOR SELECTION OF BOLL WEEVIL ERADICATION FOUNDATION
BOARDS; PROVIDING PROCEDURES; REQUIRING CONTENT OF
PETITIONS; REQUIRING CERTIFICATION; PROVIDING FOR
REFERENDUMS; PROVIDING FOR POWERS AND DUTIES;
PROVIDING FOR INSPECTIONS AND AUDITS; REQUIRING
BONDS; PROVIDING FOR LIABILITY; PROVIDING FOR
RECEIPT, COLLECTION AND DISBURSEMENT OF CERTAIN
FUNDS; PROVIDING FOR REIMBURSEMENTS; PROVIDING FOR
CERTAIN ASSESSMENTS; PROVIDING FOR ELECTIONS AND
VOTER QUALIFICATIONS; PROVIDING ELECTION
PROCEDURES; PROVIDING FOR RULES AND REGULATIONS;
PROVIDING FOR ELECTION OF BOARD MEMBERS AND
ADDITIONAL REFERENDA; PROVIDING CERTAIN PENALTIES;
AUTHORIZING LIENS; ADDING TO POWERS AND DUTIES OF
THE COMMISSIONER AND DEPARTMENT OF AGRICULTURE;
PROVIDING FOR CERTAIN AGREEMENTS; AUTHORIZING
CERTAIN INSPECTIONS; REQUIRING SUBMISSION OF
CERTAIN INFORMATION; REQUIRING REGULATIONS FOR
MOVEMENT AND STORAGE OF REGULATED ARTICLES AND
ARTICLES INFESTED WITH BOLL WEEVILS; AUTHORIZING
DESIGNATION OF ERADICATION ZONES; PROVIDING FOR

PUBLICATIONS; AUTHORIZING DESTRUCTION OF CERTAIN
PLANTS; REMOVING CERTAIN LIABILITY; PROVIDING FOR
CERTAIN RESTRICTIONS; SPECIFYING PENALTIES; MAKING
CERTAIN ACTIONS UNLAWFUL; PROVIDING FOR
CODIFICATION; PROVIDING AN EFFECTIVE DATE; AND
DECLARING AN EMERGENCY.

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

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 3-50.1 of Title 2, unless there
is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the Boll Weevil
Eradication Act.

SECTION 2. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 3-50.2 of Title 2, unless there
is created a duplication in numbering, reads as follows:

As used in the Boll Weevil Eradication Act:

1. "Board" means the board of directors of the official cotton
growers' boll weevil eradication foundation;

2. "Boll weevil" means the insect *Anthonomus grandis* Boheman,
in any stage of development, including the egg, larval, pupal and
adult stages;

3. "Certificate" means a document issued or authorized by the
Department of Agriculture indicating a regulated article is not
contaminated with the boll weevil;

4. "Commissioner" means the Commissioner of the Department of
Agriculture;

5. "Cotton" means a cotton plant or any part of it including
bolls, stalk, flowers, root, or leaves or cotton products such as
seed cotton, cottonseed, and hulls;

6. "Cotton grower" means any person who is engaged in or who has an economic interest in the business of producing cotton;

7. "Department" means the Department of Agriculture;

8. "Foundation" means the official cotton growers' boll weevil eradication foundation;

9. "Host" means any plant or plant product in which the boll weevil is capable of completing any portion of its life cycle;

10. "Infested" means the presence of the boll weevil in any life stage or the existence of circumstances that make it reasonable to believe that the boll weevil is present;

11. "Permit" means a document issued or authorized by the Department to provide for the movement of regulated articles to restricted designations for limited handling, use, or processing; and

12. "Regulated article" means any article carrying or capable of carrying the boll weevil, including but not limited to cotton plants, seed cotton, gin trash, other hosts, or mechanical cotton pickers.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-50.3 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Any nonprofit organization authorized under the laws of this state representing cotton interests may petition the Commissioner for certification as the organization authorized to conduct a referendum for the creation of the foundation and the initial election of an official cotton growers' boll weevil eradication foundation board.

B. If the referendum and election are to be conducted in a limited area of the state, the petition shall describe the boundaries of the area to be included.

C. The petition shall propose a six-member, nine-member, twelve-member, or fifteen-member board with a district representation plan.

D. Not later than the thirtieth day after the date on which a petition for certification is received, the Commissioner shall hold a public hearing to consider the petition.

E. If the Commissioner determines that, on the basis of testimony presented at the public hearing, the petitioning organization is representative of the cotton growers within the boundaries described in the petition and that the petition conforms to the purposes and provisions of the Boll Weevil Eradication Act, the Commissioner shall certify that the organization is representative of the cotton growers within the described area and is authorized to conduct the initial referendum for the creation of the foundation and election of the initial foundation board and is authorized to conduct referenda as provided by the Boll Weevil Eradication Act.

F. The board shall ask the Commissioner for authority to conduct a maximum assessment referendum in each eradication zone described in the petition. Only cotton growers in areas that are activated for the eradication program are required to pay the assessment. A cotton grower must have production in the eradication zone to vote in the assessment referendum.

G. The board may form an advisory committee composed of representatives from this state, other states, or other countries. The board may change membership on the committee from time to time as necessary.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-50.4 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. The foundation shall make available for inspection or audit by the Commissioner at any reasonable time all books and records of

account and minutes of proceedings maintained by the foundation. Not later than the forty-fifth day after the last day of the fiscal year, the foundation shall submit to the Commissioner a report itemizing all income and expenditures and describing all activities of the foundation during the fiscal year.

B. The foundation shall provide surety bonds in amounts determined by the Commissioner for employees or agents who handle funds for the foundation.

C. The members, officers, and employees of the foundation are not individually responsible to any cotton grower or other person for errors in judgment, mistakes, or other acts of omission or commission other than individual criminal actions or acts of dishonesty. A member, officer, or employee is not individually responsible for any act or omission of any other member of the foundation. If liable, members of the foundation are severally liable and not jointly liable, and a member is not liable for the default of any other member.

D. The foundation shall receive, collect, hold in trust, and disburse all assessments and other funds collected pursuant to the Boll Weevil Eradication Act as trust funds of the foundation. Funds collected by the foundation are not required to be deposited in the State Treasury and are not subject to appropriation. The foundation shall deposit all money collected pursuant to the Boll Weevil Eradication Act in a bank or other depository approved by the board. On discontinuation of a program, the Commissioner shall pay from the remaining funds of the foundation the existing obligations of the foundation. The foundation shall pay to the contributing growers on a pro rata per-unit basis any funds remaining in excess of those required for completing the business of the foundation.

E. Members of the board shall serve without compensation but shall be entitled to reimbursement for reasonable and necessary expenses incurred in the discharge of their duties.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-50.5 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. If the Commissioner determines that a foundation meets the requirements of the Boll Weevil Eradication Act and that the board members have been properly elected, the Commissioner shall certify the foundation as the official cotton growers' boll weevil eradication foundation. A certification is valid for the purposes of the Boll Weevil Eradication Act only and does not affect other organizations or associations of cotton growers established for other purposes.

B. The Commissioner shall certify only one foundation. The Commissioner may revoke the certification of the foundation if at any time the foundation fails to meet the requirements of the Boll Weevil Eradication Act.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-50.6 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. The foundation shall determine the assessment to be levied on each eradication zone as provided by the Boll Weevil Eradication Act. The foundation shall determine the amount of the assessment, the period that the levy should exist, and the geographic area to be covered by the assessment.

B. Each affected cotton grower is entitled to vote in any assessment referendum and to elect members of the board. The foundation, with Commissioner approval, shall determine any questions of eligibility to vote.

C. The balloting in the referendum shall be conducted in person or by mail by a date determined by the Commissioner, in at least one location centrally located within each county of the affected region. The physical balloting place shall be the county office of the Agriculture Stabilization and Conservation Service and be

staffed by an official of the foundation. For purposes of protecting the integrity of the referendum, producers shall present, prior to casting their ballot in the assessment, documents certifying the extent of their production within the affected region. For producers participating in the Agriculture Stabilization and Conservation Service program, those documents shall be evidence of participation in signup for the federal cotton program of the most recent crop year. For producers not participating in the federal Agriculture Stabilization and Conservation Service program, the Commissioner shall promulgate rules for the verification of producers' acreage. The referendum will be considered valid if over fifty percent (50%) of the producers affected cast ballots in favor of the referendum.

D. Assessments collected by the foundation pursuant to the Boll Weevil Eradication Act are not state funds.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-50.7 of Title 2, unless there is created a duplication in numbering, reads as follows:

The foundation shall arrange for and manage any referendum or board election held pursuant to the Boll Weevil Eradication Act. The foundation shall bear all expenses incurred in conducting a referendum or board election. The Commissioner shall adopt rules necessary to conduct a referendum or board election.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-50.8 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. If a referendum conducted pursuant to the Boll Weevil Eradication Act fails to receive the required number of affirmative votes, the petitioning certified organization may, with the consent of the Commissioner, call other referenda.

B. The foundation shall conduct elections for the purpose of electing members to the board. The board shall give proper notice.

C. A cotton grower who is eligible to vote in a referendum or election as provided by the Boll Weevil Eradication Act is eligible to be a member of or a candidate for membership on the board.

D. A candidate must file an application with the certified organization in order to have the candidate's name placed on the ballot. The application must be signed by the candidate and by ten (10) or more cotton growers who are eligible to vote at the election. The candidate must file the application not later than the thirtieth day before the date set for the election.

E. A voter may vote for an eligible person whose name does not appear on the official ballot by writing in the eligible person's name on the ballot.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-50.9 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. A cotton grower who fails to pay, when due and after reasonable notice, any assessment levied pursuant to the Boll Weevil Eradication Act is subject to a per-unit penalty, as set by the foundation.

B. A cotton grower who fails to pay all assessments and penalties before the thirty-first day after receiving notice of the delinquency shall destroy any cotton growing on the grower's acreage that is subject to the assessment. If the grower fails to destroy the cotton, the Department shall, on a recommendation of the foundation, subject the crop of the grower to an aerial application designed to eradicate boll weevil infestation. The grower shall be assessed the cost of this application. Injunctive relief available to the Department pursuant to the Boll Weevil Eradication Act is in addition to any other legal remedy available to the Department. The Department is not required to file a bond in a proceeding under this subsection.

C. In addition to any other remedies for the collection of assessments and penalties, the Department may place and perfect a lien on cotton produced and harvested before the destruction of other cotton grown from the acreage that is subject to the assessment that is due and unpaid. A buyer of cotton takes free of the lien if the buyer has not received written or actual notice of the lien from the Department or if the buyer has paid for the cotton by a check on which the Department is named as a joint payee. In an action to enforce the lien, the burden is on the Department to prove that the buyer of cotton received written or actual notice of the lien. A buyer of cotton other than a person buying cotton from the cotton grower takes free of the lien.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-50.10 of Title 2, unless there is created a duplication in numbering, reads as follows:

The Commissioner shall carry out programs to destroy and eliminate the boll weevil in this state. The Commissioner and the foundation are authorized to cooperate through written agreements with any agency of the federal government, any state agency, any person who is engaged in growing, processing, marketing, or handling cotton, or any group of persons in this state involved in programs similarly established to carry out the purposes of the Boll Weevil Eradication Act. Agreements entered into under this section may provide for cost sharing and for division of duties and responsibilities pursuant to the Boll Weevil Eradication Act and may include other provisions to carry out the purposes of the Boll Weevil Eradication Act.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-50.11 of Title 2, unless there is created a duplication in numbering, reads as follows:

The Department or its designated representative may enter cotton fields or other premises to carry out the purposes of the Boll

Weevil Eradication Act, which include but are not limited to the treatment, monitoring, and destruction of growing cotton or other host plants. The Department may inspect fields or premises in this state for the purpose of determining whether the property is infested with the boll weevil. An inspection must be conducted during reasonable daylight hours.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-50.12 of Title 2, unless there is created a duplication in numbering, reads as follows:

Each person growing cotton in this state shall furnish to the foundation on forms supplied by the foundation information that the foundation requires concerning the size and location of all commercial cotton fields and of noncommercial patches of cotton grown as ornamentals or for other purposes.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-50.13 of Title 2, unless there is created a duplication in numbering, reads as follows:

The Department may adopt rules relating to quarantining areas of this state that are infected with the boll weevil. The rules shall address the storage of regulated articles and the movement of regulated articles into and out of a quarantined area. The Department may also adopt rules governing the movement of regulated articles from other states into this state if the articles are known to be infested with the boll weevil.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-50.14 of Title 2, unless there is created a duplication in numbering, reads as follows:

The Commissioner, with the advice of the foundation, may designate by regulation one or more areas of this state as an eradication zone in which boll weevil eradication programs may be undertaken and assessments collected if referenda are passed in accordance with the Boll Weevil Eradication Act. The Commissioner

may adopt reasonable rules regarding areas where cotton may not be planted in an eradication zone if there is reason to believe planting will jeopardize the success of the program or present a hazard to public health or safety. The Commissioner may adopt rules prohibiting the planting of noncommercial cotton in eradication zones, as described in the Boll Weevil Eradication Act, and requiring that all growers of commercial cotton in an eradication zone participate in a boll weevil eradication program that includes cost sharing as required by the rules. Notice of prohibitions and requirements shall be given by publication for one (1) day each week for three (3) successive weeks in a newspaper having general circulation in the affected area. The Commissioner may adopt a reasonable schedule of administrative penalty to be assessed on growers in a designated eradication zone who do not meet the requirements of the rules issued by the Commissioner relating to reporting of acreage and participation in cost sharing. The administrative penalty adopted may not exceed Fifty Dollars (\$50.00) per acre. If a grower fails to meet the requirements of the rules adopted by the Commissioner, the Commissioner may order the destruction of cotton not in compliance with the rules. Costs incurred by the Commissioner in the destruction of cotton may be assessed against the grower.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-50.15 of Title 2, unless there is created a duplication in numbering, reads as follows:

The Department may destroy or treat volunteer or other noncommercial cotton and establish procedures for the purchase and destruction of commercial cotton in eradication zones if the Department determines the action is necessary to carry out the purposes of the Boll Weevil Eradication Act. The Department is not liable to the owner or lessee for the destruction or injury of any cotton that was planted in an eradication zone after publication of

notice as provided by the Boll Weevil Eradication Act. The foundation is liable for the destruction of cotton if the cotton was planted in an eradication zone before publication of the notice.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-50.16 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. The Commissioner may adopt rules restricting the pasturage of livestock or location of honeybee colonies on any premises in an eradication zone that has been or is being treated to eradicate the boll weevil.

B. The Commissioner and certified growers' organizations may adopt other rules deemed necessary to carry out the purposes of the Boll Weevil Eradication Act. All rules issued pursuant to the Boll Weevil Eradication Act shall be promulgated in accordance with the Administrative Procedures Act.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-50.17 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. A person who violates the Boll Weevil Eradication Act or rules adopted pursuant thereto or who alters, forges, counterfeits, or uses without authority a certificate, permit, or other document issued under the authority of the Boll Weevil Eradication Act or rules adopted pursuant thereto, upon conviction, shall be guilty of a misdemeanor.

B. No person who is in violation of the rules of the Commissioner shall move a regulated article that is infected by the boll weevil into this state from any other state. Any person violating the provisions of this section, upon conviction thereof, shall be guilty of a misdemeanor.

SECTION 18. This act shall become effective July 1, 1992.

SECTION 19. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby

declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 19th day of February, 1992.

Speaker of the House of Representatives

Passed the Senate the ____ day of _____, 1992.

President of the Senate