

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

CONFERENCE COMMITTEE SUBSTITUTE

FOR ENGROSSED

HOUSE BILL NO. 1198

By: Benson, Widener, Cotner
and Johnson (Rob) of the
House

and

Kerr of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to agriculture; creating the Boll Weevil Eradication Act; stating purpose; defining terms; requiring the Commissioner of Agriculture to implement certain sections of the Boll Weevil Eradication Act; authorizing cooperation and written agreements between certain entities for eradication purposes; authorizing the formation of the Oklahoma Boll Weevil Eradication Organization; providing for membership; specifying certain conditions; creating an initial board; providing for appointment, duties and terms; providing for certain elections; specifying procedures and eligibility; providing for payment of certain expenses; providing for content of certain procedures; providing for voting; providing for elected board of directors; specifying powers and duties; providing for liability; requiring certain information; authorizing referendum for assessment; providing for assessment; providing for procedures; providing for collection; requiring audits and inspections; providing for content; providing for payment of costs; creating the Boll Weevil Eradication Fund; providing for deposits and creation; providing for uses; providing for use of certain funds; authorizing additional assessments; making certain monies not state monies; making certain obligations non-state; providing for assessment of certain penalties; providing for remittance and reimbursement; authorizing procedures for completion of eradication program; providing conditions; authorizing revocation methods and procedures; authorizing the Commissioner of Agriculture to implement certain programs; prohibiting use of state monies; authorizing entry to certain premises for eradication activities; providing for rules relating to quarantines and certain regulated articles; providing for public hearings; making certain actions unlawful; authorizing rules; providing for notice of certain prohibitions and requirements; authorizing destruction or treatment of cotton in certain circumstances; providing compensation under certain circumstances; restricting access to elimination zones; making certain actions unlawful; specifying penalties; providing for codification; and providing an effective date.

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:

A. The *Anthonomus grandis* Boheman, known as the boll weevil, is hereby declared to be a public nuisance, a pest, and a menace to the cotton industry. Due to the interstate nature of boll weevil infestation, it is necessary to secure the cooperation of cotton growers, other state governments, and agencies of the federal government in order to carry out a program of boll weevil eradication.

B. The purpose of the Boll Weevil Eradication Act is to secure the eradication of the boll weevil.

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:

As used in the Boll Weevil Eradication Act:

1. "Board of directors" means the board of directors of the Oklahoma Boll Weevil Eradication Organization elected pursuant to the provisions of the Boll Weevil Eradication Act;

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

3. "Commissioner" means the Commissioner of the Department of Agriculture, or his designee;

4. "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;

5. "Cotton grower" means any person who is actively engaged in the production of cotton or who was actively engaged in

production of cotton in any two (2) of the three (3) years immediately preceding the calling of an election or a referendum;

6. "Department" means the State Department of Agriculture;

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

8. "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;

9. "Organization" means the Oklahoma Boll Weevil Eradication Organization established pursuant to the provisions of the Boll Weevil Eradication Act;

10. "Person" means any individual, corporation, company, society, association, or other business entity; and

11. "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 cotton harvesting equipment.

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. Upon the effective date of this act, the Commissioner is hereby authorized and directed to implement Sections 5 through 13 of this act.

B. The Commissioner is authorized to cooperate with any agency of the federal government, any state contiguous to this state, any other agency in this state, or any person engaged in growing, processing, marketing, or handling cotton, or any group of such persons in this state, in programs to implement Sections 5 through 13 of this act, and may enter into written agreements to effectuate such purposes.

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. There is hereby authorized the formation of the Oklahoma Boll Weevil Eradication Organization within this state for the purpose of entering into agreements with the State of Oklahoma,

other states, the federal government and other parties as may be necessary to carry out the purposes of the Boll Weevil Eradication Act.

The Oklahoma Boll Weevil Eradication Organization shall not be construed to be an agency of the state or a political corporation or political subdivision of the state.

Membership in the Organization shall be open to all cotton growers in this state. The Organization shall have only one class of members with each member entitled to only one vote.

B. 1. The Organization's initial board shall be composed of four (4) members. Three members shall be cotton growers from this state who are selected by the Governor from a list of six persons submitted by the Oklahoma Cotton Improvement Association for purposes of appointment to the initial board. The fourth member, appointed by the Governor, shall be a representative of state government from this state. The initial board shall serve only until a board of directors is elected pursuant to Section 6 of this act.

2. The primary function of the initial board is to:

- a. fairly and equitably establish five election districts,
- b. conduct the election of the first board of directors of the Organization,
- c. establish written procedures for the due and orderly administration of the affairs of the initial board and for its responsibilities specified pursuant to the provisions of the Boll Weevil Eradication Act,
- d. advise, consult and cooperate with agencies of this state and political subdivisions thereof, other states, the federal government and with affected groups,
- e. collect and disseminate information relating to boll weevil eradication,
- f. hold public hearings regarding the establishment of election districts, and

g. facilitate the expeditious transfer of authority to the elected board of directors.

3. In creating election districts the initial board shall utilize geographic areas balanced by cotton production density as the primary factor.

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. 1. The first election for the board of directors shall be conducted under the procedures provided by this section.

2. A cotton grower who desires to be a candidate for the board of directors must file an application with the initial board. The application must be:

a. filed not later than thirty (30) days before the date set for the election, and

b. on a form approved by the initial board.

3. On receipt of an application and verification that the application meets the requirements of this section, an applicant's name shall be placed on the ballot for the election for the board of directors.

4. The election must be preceded by at least forty-five (45) days' notice published in one or more newspapers published and distributed in the established election districts. The notice shall be published not less than once a week for three (3) consecutive weeks.

B. All cotton growers actively engaged in the production of cotton in the year of the calling of such election or who were actively engaged in production of cotton in any two (2) of the three (3) years immediately preceding the calling of the election shall be entitled to vote in any such election. The initial board shall determine any questions of eligibility to vote.

C. 1. The Department shall bear all reasonable expenses incurred in conducting the election of the first board of directors. All such expenses shall be approved by the Commissioner prior to being incurred.

2. The written procedures established by the initial board for the election process shall include but not be limited to provisions for determining:

- a. who is a cotton grower eligible to vote in an election,
- b. whether a board member is elected by a plurality or a majority of the votes cast, and
- c. qualifications for membership of the board of directors.

3. An eligible cotton grower may vote in any district in which he produces cotton.

D. Ballots in an election may be mailed to a central location or delivered in person to a location or locations designated by the initial board.

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:

A. 1. The board of directors of the Organization shall be composed of five (5) cotton growers from this state, each who are elected from the five separate districts established by the initial board.

2. The terms of office of the elected board of directors shall be as follows:

- a. one (1) year for district one,
- b. two (2) years for districts two and four, and
- c. three (3) years for districts three and five.

Thereafter the term of office shall be for three (3) years. Each district shall also elect an alternate to serve in the absence or inability of the director to serve.

B. The board of directors shall have the power and duty to:

1. Conduct board elections in the event of a vacancy on the board of directors;

2. Conduct assessment referenda pursuant to Section 9 of this act;

3. Conduct programs consistent with the Boll Weevil Eradication Act;

4. Develop a proposed maximum assessment for implementation of the Boll Weevil Eradication Act. The assessment levied pursuant to the Boll Weevil Eradication Act shall be determined upon a fair and equitable system that is based upon cotton production and infestation factors. The board of directors shall determine the collection method and manner and the period of time for which the assessment is to be levied;

5. Develop bylaws for the due and orderly administration of the affairs of the board of directors and for its responsibilities specified pursuant to the provisions of the Boll Weevil Eradication Act;

6. Develop a plan for boll weevil eradication in this state;

7. Advise, consult and cooperate with agencies of this state and political subdivisions thereof, other states, the federal government and with affected groups;

8. Collect and disseminate information relating to boll weevil eradication;

9. Contract with agencies of this state and political subdivisions thereof, other states, the federal government and other organizations or persons to comply and fulfill its mission pursuant to the provisions of the Boll Weevil Eradication Act;

10. Hold public hearings regarding the assessment referenda or for other purposes consistent with the provisions of the Boll Weevil Eradication Act;

11. Designate one or more areas of this state as "elimination zones" where boll weevil eradication programs will be undertaken; and

12. Take such other actions deemed necessary by the board of directors to implement the provisions of the Boll Weevil Eradication Act.

B. The bylaws established by the board of directors relating to boll weevil eradication and the assessment referenda shall be submitted to the State Board of Agriculture for consideration for incorporation and adoption as rules of the State Board of Agriculture. The State Board of Agriculture shall comply with the

Administrative Procedures Act in promulgating any rules adopted pursuant to the provisions of this subsection.

C. The board of directors shall:

1. Make available for inspection at an annual independent audit all books, records of account and minutes of proceedings maintained by the Organization;

2. Not later than forty-five (45) days after the last day of the fiscal year, submit to the Commissioner a report itemizing all income and expenditures and describing all activities of the Organization during the fiscal year;

3. Provide surety bonds in amounts determined by the Commissioner for employees or agents who handle funds for the Organization;

4. Receive, hold in trust, and disburse all assessments and other funds collected pursuant to the Boll Weevil Eradication Act as trust funds of the Organization; and

5. Make available all books, records of account and minutes of proceedings of the Organization for inspection or audit by the Commissioner at any reasonable time.

D. 1. Pursuant to the authority granted by the Boll Weevil Eradication Act, except for instances of gross negligence, individual criminal actions or acts of dishonesty, the board of directors and employees of the board of directors are not individually liable to a cotton grower or other person for:

- a. errors in judgment,
- b. mistakes, or
- c. omissions.

2. A member of the board of directors or an employee of the board of directors is not individually liable for an act or omission of another member or employee of the board of directors.

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

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:

Every person growing cotton in this state shall furnish to the board of directors such information as the board of directors may require concerning the size and location of all commercial cotton fields and of noncommercial patches of cotton grown as ornamentals or for other purposes.

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. At the request of the board of directors, the Department shall provide for a referendum among cotton growers upon the question of whether an assessment shall be levied upon cotton growers in the state to offset the cost of boll weevil eradication.

B. A public hearing regarding the proposed assessment shall be held in each of several locations within the state.

C. All cotton growers actively engaged in the production of cotton in the year of the calling of such referendum or who were actively engaged in production of cotton in any two of the three years immediately preceding the calling of the referendum shall be entitled to vote in any such referendum. The board of directors shall determine any questions of eligibility to vote.

D. The Department shall bear all reasonable expenses incurred in conducting a referendum. All such expenses shall be approved by the Commissioner prior to their being incurred.

E. The bylaws of the board of directors shall provide for referendum procedures.

F. The board of directors shall propose in the referendum the:

1. Maximum assessment to be paid by cotton growers by district;
2. Time for which the assessment will be levied; and
3. Method and manner of assessment.

G. An eligible cotton grower may vote only once in the referendum.

H. Ballots in a referendum may be mailed to a central location or may be cast personally by the cotton grower at a location or locations specified by the board of directors.

I. A referendum is approved if at least sixty percent (60%) of those voting vote in favor of the assessment.

J. If an assessment referendum is approved, the board of directors shall collect the assessment from the cotton growers in the year such assessment is approved.

K. If the first assessment under this section is not approved, the board of directors may conduct one other referendum. Such other referendum shall not be held before the one hundred twenty-first day after the date on which the last referendum on the same issue was held.

L. After the passage of any referendum, the eligible voters shall be allowed, by subsequent referenda periodically to vote on whether to continue the assessments. All of the requirements for an initial referendum must be met in subsequent referenda except that any subsequent referenda shall be paid from any funds available to the Organization.

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:

A. There is hereby created the Boll Weevil Eradication Fund. The Boll Weevil Eradication Fund shall be administered by the board of directors for the benefit of the cotton growers in this state to eradicate boll weevils. The Boll Weevil Eradication Fund shall be established and maintained in a bank or other depository approved by the Commissioner.

B. The Boll Weevil Eradication Fund shall consist of:

1. All monies received by the board of directors as proceeds from the assessment imposed pursuant to Section 9 of this act;

2. Interest attributable to investment of money in the Boll Weevil Eradication Fund; and

3. Monies received by the board of directors in the form of gifts, grants, reimbursements, or from any other source designated by law for deposit to the Boll Weevil Eradication Fund.

C. 1. Except as otherwise provided by law, the monies deposited in the Boll Weevil Eradication Fund shall at no time become monies of the state.

2. Any costs incurred by the board of directors pursuant to the provisions of the Boll Weevil Eradication Act shall not exceed the actual expenditures made by the board of directors to implement and manage the Boll Weevil Eradication Act.

D. Monies in the Boll Weevil Eradication Fund shall only be expended for:

1. Implementation and management of the Boll Weevil Eradication Act; and

2. Costs incurred by the board of directors and the State Board of Agriculture for the administration of the Boll Weevil Eradication Act.

E. Any debts or obligations of the organization shall not become or be construed to be obligations of this state.

F. The Organization shall provide to the Department an annual audit of the Boll Weevil Eradication Fund performed by a certified public accountant.

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:

A. The board of directors may request the Department to provide for the collection of the assessment and of an administrative penalty from any person who fails to pay an assessment when due pursuant to the Boll Weevil Eradication Act.

B. Any penalty collected pursuant to the provisions of this section shall be deposited in the Boll Weevil Eradication Fund, provided, the Department shall be reimbursed for any costs incurred by the Department in the enforcement of this section.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-50.12 of Title 2, Req. No. 7124Page 11

unless there is created a duplication in numbering, reads as follows:

A. Upon the determination by the board of directors that the boll weevil eradication program has been completed, the board of directors shall provide notice of such completion to the Commissioner along with a request for discontinuance of the eradication program. Any such request shall include documentation supporting the eradication of the boll weevil in this state and a plan for discontinuance of the program and assessment.

B. The Commissioner shall determine whether or not the further elimination of the boll weevil is necessary and approve or disapprove discontinuance of the Organization and the plan for dissolution.

C. Upon completion of dissolution, the board of directors shall file a final report with the Commissioner including a financial report. Final books of the board of directors shall be filed with the Commissioner, and are subject to audit by the Department.

D. The Commissioner shall pay from the Organization's remaining funds all of the Organization's outstanding obligations. Funds remaining after payment under this paragraph shall be returned to contributing cotton growers on a pro rata basis.

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:

A. If forty percent (40%) or more of the cotton growers within this state participating in the program present to the board of directors a petition calling for a referendum of the qualified voters on the proposition of discontinuing the program, the board of directors shall conduct a referendum for that purpose.

B. The board of directors shall give notice of the referendum and conduct the referendum as provided in Section 9 of this act provided that such referendum shall be at the expense of the board of directors.

C. The board of directors shall conduct the referendum within ninety (90) days of the date of filing of the petition.

D. Approval of the proposition is by majority vote of those voting. If the proposition is approved, the program shall be abolished.

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:

A. Upon the passage and collection of the assessment pursuant to Section 9 of this act, the Commissioner is hereby authorized to carry out programs of the board of directors to eradicate boll weevils in this state at the request of the board of directors.

B. State-appropriated monies shall not be a funding source for activities conducted pursuant to Sections 15 through 20 of this act. The Department shall be reimbursed for any costs and expenses incurred as a result of Sections 15 through 20 of this act.

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 Commissioner is authorized to cooperate with any agency of the federal government, any state contiguous to this state, any other agency in this state, or any person engaged in growing, processing, marketing, or handling cotton in this state, or any group of such persons, in programs to effectuate the purposes of the Boll Weevil Eradication Act, and may enter into written agreements to effectuate such purposes. The agreements may provide for cost sharing, for division of duties and responsibilities pursuant to the Boll Weevil Eradication Act and may include other provisions generally to effectuate the purposes of the Boll Weevil Eradication Act.

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. 1. The board of directors, or the Department at the request of the board of directors, shall have authority, to:

- a. enter cotton fields and other premises in order to carry out activities, including but not limited to treatment with pesticides, monitoring, and destruction of growing cotton and other host plants, as may be necessary to carry out the provisions of the Boll Weevil Eradication Act,
- b. make inspection of any fields or premises in this state and any property located therein or thereon for the purpose of determining whether such property is infested with boll weevils,

2. The inspection and other activities may be conducted at any hour with the permission of the owner or person in charge of the premises or property. If permission is denied, the inspection and other activities shall be conducted in a reasonable manner, with a warrant, with respect to any premises or property.

B. Any judge of this state may, within his territorial jurisdiction, and upon proper cause to believe that any cotton or other regulated article is in or upon any premises in this state, issue warrants for the purpose of conducting administrative inspections and other activities authorized by the Boll Weevil Eradication 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. The Department is authorized to promulgate rules, including but not limited to:

1. Quarantining this state, or any portion thereof;
2. Governing the storage or other handling in the quarantined areas of regulated articles and the movement of regulated articles into or from such areas, when the Department determines that such

action is necessary, or reasonably appears necessary, to prevent, eradicate, or retard the spread of boll weevils;

3. Governing the movement of regulated articles from any other state or portion thereof into this state when such state is known to be infested with boll weevils. Before quarantining any area, the Department shall hold a public hearing, at which any interested party may appear and be heard either in person or by attorney. Provided however, the Department may promulgate rules, imposing a temporary quarantine for a period not to exceed sixty (60) days, during which time a public hearing, as herein provided, shall be held if it appears that a quarantine for more than sixty (60) days will be necessary to prevent, eradicate, or retard the spread of boll weevils; and

4. Establishing a reasonable schedule of administrative penalties for violations of the Boll Weevil Eradication Act.

B. Any rules promulgated pursuant to the Boll Weevil Eradication Act shall be promulgated in accordance with the Administrative Procedures Act.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-50.18 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. When a cotton grower fails to meet the rules promulgated by the Department, the Commissioner, at the request of the board of directors, shall have authority to destroy cotton in elimination zones not in compliance with such rules.

B. The Commissioner, at the request of the board of directors shall have authority to destroy, or to treat with pesticides, volunteer or other noncommercial cotton in elimination zones.

C. The board of directors shall pay for losses resulting from the destruction of cotton which was planted in elimination zones prior to publication notice of the elimination zone as provided in Section 7 of this act.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-50.19 of Title 2,

unless there is created a duplication in numbering, reads as follows:

A. It shall be unlawful for any person to store or handle any regulated article in a quarantined area, or to move into or from a quarantined area any regulated article, except under such conditions as may be prescribed by the rules promulgated by the Commissioner.

B. Any person who, except in compliance with the rules of the Department, moves any regulated article into this state from any other state which the Department found in such rules is infested by boll weevils shall be deemed guilty of a misdemeanor and, upon conviction thereof shall be subject to the penalty provided in Section 20 of this act. In addition, such person may be required to pay restitution for any damages caused by a violation of this section.

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-50.20 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Any person who violates any of the provisions of Boll Weevil Eradication Act or the rules promulgated thereto, or who shall alter, forge, counterfeit, or use without authority any certificate or permit or other document provided for in the Boll Weevil Eradication Act or in rules promulgated thereto shall, upon conviction thereof, be guilty of a misdemeanor and shall be punished by a fine of not less than Fifty Dollars (\$50.00) nor more than One Thousand Dollars (\$1,000.00).

B. Except as otherwise provided by the Boll Weevil Eradication Act any penalty collected by the Department pursuant to the provisions of this section shall be deposited in the Agriculture Revolving Fund.

SECTION 21. This act shall become effective September 1, 1993.

44-1-7124 KSM