

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 1198

By: Benson of the House

and

Kerr of the Senate

COMMITTEE SUBSTITUTE

An Act Relating to agriculture; creating the Boll Weevil Eradication Act; stating purpose; defining terms; authorizing the Commissioner of Agriculture to carry out certain programs to eradicate boll weevils; authorizing cooperation and written agreements between certain entities for eradication purposes; authorizing entry to certain premises for eradication activities; providing information; providing for rules relating to quarantines and certain regulated articles; providing for public hearings; making certain actions unlawful; authorizing rules and regulations relating to eliminating zones for eradication purposes; providing for notice of certain prohibitions and requirements; requiring certain cotton growers to participate in eradication program and cost sharing; authorizing rules relating to certain administrative penalties; limiting administrative penalties; authorizing destruction of cotton in certain circumstances; authorizing the destruction or treatment of certain cotton in elimination zones; establishing procedures for purchase and destruction of certain cotton; removing certain liability; providing compensation under certain circumstances; restricting access to elimination zones; specifying penalties; authorizing certification of a cotton growers' organization for eradication purposes; specifying certification requirements; providing for certification and revocation of certification; limiting certification; authorizing referendum for assessment; stating that certain eradication programs may not be undertaken in certain circumstances; providing for assessment; providing for election procedures; providing for collection and remittance of assessment to certified organization; requiring annual audit; creating Boll Weevil Eradication Fund; providing for deposits and remittances; prohibiting certain use of the fund; stating assessment shall not be state funds; specifying penalties; providing for rules and regulations; 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 suppression and eradication.

B. The purpose of the Boll Weevil Eradication Act is to secure the eradication of the boll weevil and to provide for the certification of a cotton growers' organization to cooperate with state and federal agencies in the administration of cost-sharing programs for the eradication and suppression of the boll weevil and other cotton pests.

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" means the State Board of Agriculture;
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, or his designee;

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 actively engaged in the production of cotton in the year of the calling of a referendum under the Boll Weevil Eradication Act or who was actively engaged in production of cotton in any two of the three years immediately preceding the calling of such an election referendum;

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

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

9. "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;

10. "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;

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

The Commissioner is hereby authorized and directed to carry out programs to destroy and eliminate boll weevils in this state. 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 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 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. The Commissioner shall have authority, as provided in this section, to 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. The Commissioner shall have authority to 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 the boll weevil. The inspection and other activities may be conducted at any hour with the permission of the owner or person in charge. If permission is denied the Commissioner, the inspection and other activities shall be conducted in a reasonable manner, with a warrant, with respect to any premises.

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 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:

Every person growing cotton in this state shall furnish to the Commissioner, on forms supplied by the Commissioner, such information as the Commissioner 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 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. The Department is authorized to promulgate rules for quarantining this state, or any portion thereof, and for 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 he shall determine that such action is necessary, or reasonably appears necessary, to prevent or retard the spread of the boll weevil.

B. The Department is also authorized to promulgate regulations 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 the boll weevil.

C. Before quarantining any area, the Commissioner shall hold a public hearing under such rules as he shall determine, at which hearing any interested party may appear and be heard either in person or by attorney. Provided however, the Department may promulgate regulations, 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 or retard the spread of the boll weevil.

D. 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 regulations promulgated by the Commissioner.

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. The Department is authorized to designate by rule and regulation one or more areas of this state as "elimination zones" where boll weevil eradication programs will be undertaken. The Department is authorized to promulgate reasonable regulations regarding areas where cotton cannot be planted within an

elimination zone when he has reason to believe it will jeopardize the success of the program or present a hazard to public health or safety.

B. The Department is authorized to promulgate regulations prohibiting the planting of noncommercial cotton in such elimination zones, and requiring that all growers of commercial cotton in the elimination zones participate in a program of boll weevil eradication including cost sharing as prescribed in the regulations. Notice of such prohibition and requirement 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.

C. The Department is authorized to set by rule a reasonable schedule of administrative penalties to be assessed when growers in designated elimination zones do not meet the requirements of Section 7 of this act and participation in cost sharing as prescribed by regulation. The administrative penalties shall not exceed a charge of Twenty-five Dollars (\$25.00) per acre.

D. When a grower fails to meet the requirements of regulations promulgated by the Department, the Commissioner shall have authority in elimination zones to destroy cotton not in compliance with such regulations.

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. The Commissioner shall have authority to destroy, or in his discretion to treat with pesticides, volunteer or other noncommercial cotton and to establish procedures for the purchase and destruction of commercial cotton in elimination zones when the Commissioner deems such action necessary to effectuate the purposes of the Boll Weevil Eradication Act.

B. No payment shall be made by the Commissioner to the owner or lessee for the destruction or injury of any cotton which was planted in an elimination zone after publication of notice as provided in Section 8 of this act, or which was otherwise handled in violation of this act or the regulations adopted pursuant

thereto. However, the Commissioner shall pay for losses resulting from the destruction of cotton which was planted in such zones prior to promulgation of such notice.

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 Department is authorized to promulgate regulations restricting the pasturage of livestock, entry by persons, and location of honeybee colonies in any premises in an elimination zone which have been or are to be treated with pesticides or otherwise treated to cause the eradication of the boll weevil, or in any other area that may be affected by such treatments.

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. Any person who shall violate any of the provisions of Sections 1 through 9 of this act or the regulations promulgated therein, or who shall alter, forge, counterfeit, or use without authority any certificate or permit or other document provided for in this act or in the regulations promulgated hereunder, shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than Fifty Dollars (\$50.00) nor more than One Thousand Dollars (\$1,000.00).

B. Any person who shall, except in compliance with the regulations of the Department, move any regulated article into this state from any other state which the Department found in such regulations is infested by the boll weevil shall be guilty of a misdemeanor and shall be subject to the penalty provided in subsection A of this section and in addition shall be assessed with a requirement for restitution for any damages caused by a violation of this subsection.

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:

A. The Board shall certify a cotton growers' organization 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.

B. In order to be eligible for certification by the Board, the cotton growers' organization must demonstrate to the satisfaction of the Board that:

1. It is a nonprofit organization and could qualify as a tax-exempt organization under Section 501(a) of the Internal Revenue Code of 1954 (26 USC 501(a));

2. Membership in the organization shall be open to all cotton growers in this state;

3. The organization shall have only one class of members with each member entitled to only one vote;

4. The organization's initial Board of Directors 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 (6) 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 an elected Board of Directors is elected as the permanent Board of Directors of the organization. The permanent Board of Directors shall be composed of five (5) cotton growers from this state, which are elected from five (5) separate districts that are created by the initial board. In creating such districts the initial Board shall utilize geographic areas balanced by cotton production density as the primary factor. The primary function of the initial board is to fairly and equitably set up the election district, and to facilitate the expeditious transfer of authority to the elected five-member board;

5. All books and records of account and minutes of proceedings of the organization shall be available for inspection or audit by the Commissioner at any reasonable time; and

6. Employees or agents of the growers' organization who handle funds of the organization shall be adequately bonded.

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. Upon determination by the Board that the organization meets the requirements of Section 12 of this act, the Board shall certify the organization as the official cotton growers' organization. The certification shall be for the purposes of the Boll Weevil Eradication Act only, and shall not affect other organizations or associations of cotton growers established for other purposes.

B. The Board shall certify only one such organization, provided that the Board may revoke the certification of the organization if at any time the organization shall fail to meet the requirements of this act.

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. At the request of the certified organization, the Board shall authorize a referendum among cotton growers upon the question of whether an assessment shall be levied upon cotton growers in the state to offset, in whole or in part, the cost of boll weevil or other cotton pest eradication and suppression programs authorized by the Boll Weevil Eradication Act or by any other law of this state. Provided that if such an assessment is not requested and passed as required herein, the Department shall not be under any obligation for a boll weevil eradication program as provided in the Boll Weevil Eradication Act.

B. 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 amount of the assessment, the period of time for which it shall be levied, and the geographical area to be covered by the assessment shall be determined by the Board.

C. All affected 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 and the Board shall determine any questions of eligibility to vote.

D. If at least sixty percent (60%) of those voting vote in favor of the assessment, the assessment shall be collected by the Department from the affected cotton growers and such assessment shall be assessed on all cotton produced in the year such assessment is approved.

E. The assessments collected by the Department pursuant to the Boll Weevil Eradication Act shall be promptly remitted to the certified organization under such terms and conditions as the Commissioner shall deem necessary to ensure that such assessments are used in a sound program of eradication or suppression of the boll weevil or other cotton pests.

F. The certified organization shall provide to the Department an annual audit of its accounts performed by a certified public accountant.

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:

A. There is hereby created the Boll Weevil Eradication Fund. The Boll Weevil Eradication Fund shall be administered by the Board for the benefit of the cotton growers in this state to eradicate or suppress boll weevils or other cotton pests in accordance with subsection E of Section 14 of this act.

B. The Boll Weevil Eradication Fund shall be excluded from budget and expenditure limitations.

C. The Boll Weevil Eradication Fund shall consist of:

1. All monies received by the Board as proceeds from the assessment imposed pursuant to Section 14 of this act; and

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

D. 1. The monies deposited in the Boll Weevil Eradication Fund shall at no time become monies of the state and shall not become part of the general budget of the Board or any other state agency. Except as otherwise authorized by this section, no monies from the Boll Weevil Eradication Fund shall be transferred for any purpose to any other state agency or any account of the Board or be used for the purpose of contracting with any other state agency or reimbursing any other state agency for any expense.

2. Assessments remitted to the certified organization from the Boll Weevil Eradication Fund shall not become or be construed to be an obligation of this state.

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. A cotton grower who fails to pay when due and upon reasonable notice any assessment levied under the Boll Weevil Eradication Act shall be subject to a penalty of not more than Twenty-five Dollars (\$25.00) per acre, as established in the Board's regulations.

B. A cotton grower who fails to pay all assessments, including penalties, within thirty (30) days of notice of penalty shall destroy any cotton plants growing on his acreage which is subject to the assessment. Any such cotton plants which are not destroyed shall be deemed to be a public nuisance. The Commissioner may apply to a court of competent jurisdiction to abate and prevent such nuisance. Upon judgment and order of the court, such nuisance shall be condemned and destroyed in the manner directed by the court. The grower shall be liable for all court costs and fees, and other proper expenses incurred in the enforcement of this section.

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:

The Department shall have authority to promulgate such other rules as it deems necessary to further effectuate the purposes of the Boll Weevil Eradication Act. Any rules promulgated pursuant to the Boll Weevil Eradication Act shall be promulgated in accordance with the Administrative Procedures Act and any additional requirements prescribed in the Boll Weevil Eradication Act.

SECTION 18. This act shall become effective September 1, 1993.

44-1-6409 KSM