STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 2487

By: Benson and Braddock of the House

and

Kerr and Capps of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to agriculture; amending Section 5, Chapter 198, O.S.L. 1993, as amended by Section 1, Chapter 381, O.S.L. 1997, and Section 7, Chapter 198, O.S.L. 1993, as amended by Section 3, Chapter 381, O.S.L. 1997 (2 O.S. Supp. 1997, Sections 3-50.5 and 3-50.7), which relate to the Boll Weevil Eradication Act; updating language; providing for qualifications of the board of directors; requiring election of alternate members; providing for reasons to serve; requiring oath of office; providing for terms of office; providing conditions for election of director and alternate director; providing for audit by the Office of the State Auditor and Inspector; amending 74 O.S. 1991, Section 85.12, as last amended by Section 26 of Enrolled House Bill No. 3348 of the 2nd Session of the 46th Oklahoma Legislature, which relates to exemptions from Central Purchasing; making certain expenditures and contracts relating to boll weevil

eradication exempt; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 5, Chapter 198, O.S.L. 1993, as amended by Section 1, Chapter 381, O.S.L. 1997 (2 O.S. Supp. 1997, Section 3-50.5), is amended to read as follows:

Section 3-50.5 A. 1. There is hereby created a boll weevil eradication district to be known as the Oklahoma Boll Weevil Eradication Organization within this state for the purpose of eradicating boll weevils and for 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.

2. The Organization shall be, and is hereby declared to be, a governmental agency of the State of Oklahoma, body politic and corporate, with powers of government and with the authority to exercise the rights, privileges and functions specified by the Boll Weevil Eradication Act.

~~2.~~ B. 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.~~ C. 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 3-50.6 of this title.

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 2. AMENDATORY Section 7, Chapter 198, O.S.L. 1993, as amended by Section 2, Chapter 381, O.S.L. 1997 (2 O.S. Supp. 1997, Section 3-50.7), is amended to read as follows:

Section 3-50.7 A. 1. The board of directors of the <u>Oklahoma Boll Weevil Eradication</u> 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.

3. Each district shall also elect an alternate to serve ~~in the absence or inability of the director to serve.~~ for one or more of the following reasons:

a. the death of the director,

b. the resignation of the director,

c. the incapacity of the director for a period of four (4) consecutive months or more,

d. if the director's principal residence changes to a location outside the district from which the director was elected, or

e. if the director is removed from office by a majority vote of the board of directors for cause. Causes for removal include the following:

(1) neglect of duty,

(2) willful misconduct,

(3) malpractice in office,

(4) self-dealing,

(5) incompetency,

(6) gross inefficiency, or

(7) any other unbecoming conduct which can or may affect the Organization's ability to satisfactorily perform its duties or carry out its mission as a public body or otherwise,

The alternate director must take the oath of office before assuming the role as a director on the board.

4. The directors and alternate directors shall hold office until their respective successors are elected.

5. The cotton grower with the highest number of votes from each district shall be elected as the director each election. The cotton grower with the second highest number of votes from each district shall be elected as the alternate director each election.

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 3-50.9 of this title;

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 pursuant to Section 3-50.9 of ~~Title 2 of the Oklahoma Statutes~~ this title;

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, implement and pay for 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;

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

~~13.~~ Sue and be sued, implead and be impleaded, complain and defend in all courts;

~~14.~~ 13. Adopt, use, and alter at will a corporate seal;

~~15.~~ 14. Adopt bylaws for the management and regulation of its affairs and to promulgate and issue rules governing its operations;

~~16.~~ 15. Appoint officers, agents and employees and prescribe their duties and fix their compensation, within any limitations prescribed by law;

~~17.~~ 16. Make contracts of every name and nature and execute all instruments necessary or convenient for the carrying on of its business;

~~18.~~ 17. Accept grants from and enter into contracts or other transactions with any federal agency;

~~19.~~ 18. Issue and sell bonds, or otherwise borrow money, in such amounts as shall be needed from time to time for the purposes set forth in the Boll Weevil Eradication Act.

a. Such bonds may:

(1) be issued in one or more series,

(2) bear such date or dates,

(3) mature at such time or times not exceeding twenty (20) years from their date,

(4) be in such denomination or denominations,

(5) be in such form, either coupon or registered,

(6) carry such registration and conversion privileges,

(7) be executed in such manner,

(8) be payable in such medium of payment at such place or places,

(9) be subject to such terms of redemption with or without premium, and

(10) bear such rate or rates of interest, as may be provided by resolution or resolutions to be adopted by the Board within such limits provided by law, and be sold in such manner and at such price or prices as may be considered by the Board to be advisable.

b. Bonds shall have all the qualities and incidents of negotiable paper and the interest thereon shall not be subject to taxation by the State of Oklahoma.

c. The board of directors may issue bonds pursuant to the Boll Weevil Eradication Act for the purpose of refunding any obligations of the board of directors, or may authorize and deliver a single issue of bonds hereunder for the purpose in part of refunding obligations of the board.

d. The bonds issued pursuant to the Boll Weevil Eradication Act shall not be an indebtedness of the State of Oklahoma but shall be special obligations payable solely from the assessments. The board of directors is authorized and directed to pledge all or

any part of such assessments to the payment of and interest on the bonds.

e. The board of directors may enter into any agreement or contracts with the United States of America or the State of Oklahoma or any agency or instrumentality thereof which it may consider advisable or necessary in order to obtain a grant of funds or other aid to be used in connection with the proceeds of the bonds.

f. All bonds issued pursuant to the Boll Weevil Eradication Act shall have on the backs thereof the certificate required by Section 29 of Article 10 of the Constitution of Oklahoma. Such bonds shall be submitted to the Attorney General of Oklahoma for examination. Such bonds, having been examined and certified as legal obligations by the Attorney General in accordance with such requirements as the Attorney General may make, shall be incontestable in any court in the State of Oklahoma unless suit thereon shall be brought in a court having jurisdiction thereof within thirty (30) days from the date of such approval. Bonds so approved by the Attorney General shall be prima facie valid and binding obligations according to their terms. The only defense which may be offered thereto in any suit instituted after such thirty-day period shall have expired shall be a violation of the Constitution.

g. Any bank, trust or insurance company organized under the laws of Oklahoma may invest its capital, surplus and reserves in bonds issued under the provisions of the Boll Weevil Eradication Act; ~~and~~

~~20.~~ 19. File an application, at its discretion, with the Supreme Court of Oklahoma for the validation of the Boll Weevil

Eradication Act or for the approval of any series of bonds to be issued hereunder or any other actions to be taken by the board of directors. Exclusive original jurisdiction is hereby conferred upon the Supreme Court to hear and determine each such application.

a. It shall be the duty of the Supreme Court to give such applications precedence over the other business of the Supreme Court and to consider and pass upon the applications and any protests which may be filed thereto as speedily as possible.

b. Notice of the hearing on each application shall be given by a notice published in a newspaper of general circulation in the state that on a day named, the board of directors will ask the court to hear its application. Such notice shall inform all persons interested that they may file protests against the validation or approval and be present at the hearing and contest the same. Such notice shall be published one time, not less than ten (10) days prior to the date named for the hearing, and the hearing may be adjourned from time to time at the discretion of the court.

c. In any action to approve bonds, if the Supreme Court is satisfied that the bonds have been properly authorized in accordance with the provisions of the Boll Weevil Eradication Act and that when issued they will constitute valid obligations in accordance with their terms, the Supreme Court shall render its written opinion approving the bonds and shall fix the time within which a petition for rehearing may be filed. The decision of the Supreme Court shall be a judicial determination of the validity of the bonds, shall be conclusive as to the board of directors, its

officers and agents, and thereafter the bonds so approved and the revenues pledged to their payment shall be incontestable in any court in the State of Oklahoma;

20. Conduct elections, at the discretion of the board of directors, for any lawful purpose, including, but not limited to, any assessment modification policy to deal with natural disasters. Election procedures shall be established by the board of directors. Fifty percent (50%) or more of the cotton growers voting must approve each ballot issue for its adoption; and

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

C. As used in subsection B of this section, "bonds" means bonds, notes, loan agreements, or other forms of indebtedness issued or delivered by the Oklahoma Boll Weevil Eradication Organization.

D. 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 determination as to whether such bylaws will be promulgated as rules of the State Board of Agriculture. Such bylaws may be promulgated in whole or in part or may be returned for modification to the board of directors. The State Board of Agriculture shall comply with the Administrative Procedures Act in promulgating any rules adopted pursuant to the provisions of this subsection.

E. The board of directors shall:

1. Make available for inspection ~~at~~ by the Office of the State Auditor and Inspector for 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.

F. 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. Under no circumstances shall the board of directors, the individual board members or employees of the board of directors be personally liable for any bonds of the Organization.

3. 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.

G. 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 3. AMENDATORY 74 O.S. 1991, Section 85.12, as last amended by Section 26 of Enrolled House Bill No. 3348 of the 2nd Session of the 46th Oklahoma Legislature, is amended to read as follows:

Section 85.12 A. The provisions of this section shall not be construed to affect any law relating to fiscal or accounting procedure except such as may be directly in conflict herewith; and all claims, warrants and bonds shall be examined, inspected and approved as now provided by law.

B. ~~The~~ Except as otherwise provided by this section, the following acquisitions shall not be included within the purview of the Oklahoma Central Purchasing Act~~, Section 85.1 et seq. of this title~~:

1. Food and other products produced by state institutions and agencies;

2. Contracts for construction of new buildings and for the repair, maintenance or modernization of old buildings by institutions of The Oklahoma State System of Higher Education;

3. The printing or duplication of publications or forms of whatsoever kind or character by state agencies, which service is performed upon their own equipment, by their own employees. In order to be exempt from the Oklahoma Central Purchasing Act pursuant to this paragraph, the state agency may only use equipment owned or leased by the agency and may only utilize that equipment for printing services required by the agency in performing duties imposed upon the agency or functions authorized to be performed by the agency. Any use of the equipment by the agency pursuant to an agreement or contract with any other entity resulting in delivery of intermediate or finished products to the entity purchasing or using the products shall be subject to the provisions of the Oklahoma Central Purchasing Act;

4. Acquisitions by institutions of The Oklahoma State System of Higher Education, the Oklahoma State Regents for Higher Education, or the University Centers subject to the State Regents insofar as such acquisitions relate to textbooks, laboratory supplies, instructional materials, and specialized laboratory equipment, or to

acquisitions for the telecommunications network known as OneNet, whether said network is governed or operated by the State Regents or any other state entity assigned responsibility for OneNet;

5. Department of Transportation and Transportation Commission contractual services or right-of-way purchases. Contracts awarded pursuant to bids let by the Transportation Commission for the maintenance or construction of streets, roads, highways, bridges, or underpasses, or any other transportation facilities under the control of the Department of Transportation, the acquisitions of equipment or materials accruing to the Department of Transportation required in Federal-Aid contracts, and contracts for public service type announcements initiated by the Department of Transportation. Contractual services as used herein shall not include advertising or public relations or employment services;

6. Utility services where rates therefor are regulated by a state or federal regulatory commission, or by city ordinance or by an Indian Tribal Council for use by the Department of Corrections only;

7. Acquisition of products and services by the University Hospitals and the University Hospitals Authority. The Authority shall develop standards for the acquisition of products and services and may elect to utilize Central Purchasing when appropriate. Such standards shall foster economy, short response time, and shall include appropriate safeguards and written records to ensure appropriate competition and economical and efficient purchasing, and shall be approved by the Director of Central Purchasing;

8. Contracts for custom harvesting by the Department of Corrections for the Department or its institutions;

9. Contracts with private prison contractors which are subject to the contracting procedures of Section 561 of Title 57 of the Oklahoma Statutes;

10. Acquisitions of aircraft by agencies authorized by the Legislature to purchase aircraft;

11. Purchases by the Oklahoma Municipal Power Authority;

12. Acquisitions by the Grand River Dam Authority;

13. Purchases by rural water, sewer, gas or solid waste management districts created pursuant to ~~Section 1324.1 et seq. of Title 82 of the Oklahoma Statutes~~ the Rural Water, Sewer, Gas and Solid Waste Management Districts Act;

14. Purchases by the Oklahoma Ordnance Works Authority or Midwestern Oklahoma Development Authority;

15. Contracts entered into by the Oklahoma Industrial Finance Authority for the services of an appraiser or for acquisition of insurance when the Authority's Board of Directors determines that an emergency exists, and for the services of legal counsel when approved by the Attorney General;

16. Expenditure of monies appropriated to the State Board of Education for the purpose of Local, State-supported Programs and State-supported Programs except monies appropriated for the Administrative and Support Functions of the State Department of Education;

17. Expenditure of monies appropriated to the State Department of Rehabilitation Services for educational programs or educational materials for the Oklahoma School for the Blind and the Oklahoma School for the Deaf;

18. Contracts entered into by the Oklahoma Department of Vocational and Technical Education for the development, revision, or updating of vocational curriculum materials, and contracts entered into by the Oklahoma Department of Vocational and Technical Education for training and supportive services that meet the needs of new or expanding industries;

19. Contracts entered into by the Oklahoma Center for the Advancement of Science and Technology for professional services;

20. Contracts entered into by the Oklahoma Department of Commerce pursuant to the provisions of Section 5066.4 of this title;

21. Purchases made by the Oklahoma Historical Society from monies used to administer the White Hair Memorial;

22. Purchases of products available to an agency through a General Services Administration contract or other federal contract if the item is on current statewide contract and the terms of such contract are more favorable to the agency than the terms of a statewide contract for the same products as determined by the Director of Central Purchasing;

23. Contracts for managed health care services entered into by the state entity designated by law or the Department of Human Services, as specified in paragraph 1 of subsection A of Section 1010.3 of Title 56 of the Oklahoma Statutes;

24. Purchases of products by the Forestry Service of the State Department of Agriculture as authorized by the federal General Services Administration through a General Services Administration contract or other federal contract if the item is not on current statewide contract or the terms of such federal contract are more favorable to the agency than the terms of a statewide contract for the same products;

25. Purchases amounting to less than the amount requiring competitive bid pursuant to Section 85.7 of this title. The Director of Central Services shall promulgate rules related to such purchases in excess of Seven Hundred Fifty Dollars ($750.00) and not exceeding Two Thousand Five Hundred Dollars ($2,500.00) to ensure competitiveness and fairness in such purchases;

26. Purchases or acquisitions of clothing for clients of the Department of Human Services and purchases and acquisitions of food for group homes operated by the Department of Human Services;

27. Purchases made or contracts entered into by the Oklahoma Energy Resources Board;

28. Purchases or acquisitions of clothing for juveniles in the custody of the Office of Juvenile Affairs and purchases and acquisitions of food for group homes operated by the Office of Juvenile Affairs;

29. State contracts for flexible benefits plans pursuant to the Oklahoma State Employees Benefits Act, Section 1361 et seq. of this title; ~~and~~

30. Expenditures incurred by the Department of Securities to investigate, initiate, or pursue administrative, civil, or criminal proceedings involving potential violations of the acts under the Department's jurisdiction; and

31. Expenditures of money or contracts entered into by the Oklahoma Boll Weevil Eradication Organization for employment and personnel services, and for the purchase or leasing of sprayers, blowers, traps, and attractants, related to the eradication of boll weevils in this state, or as part of a national regional boll weevil eradication program.

C. ~~Notwithstanding the exclusions provided herein, any~~ Any agency or common school of Oklahoma, any municipality of the state, any rural fire protection district, and county officers may, unless the contract with the state specifies otherwise, avail themselves of the provisions of the Oklahoma Central Purchasing contracts and the services of the Director of Central Purchasing. Provided ~~further~~, ~~however,~~ that any subdivision of government and any rural fire protection district of the state may designate the office of Oklahoma Central Purchasing as its agent for the purchase or procurement of any item or service contracted or available to the state.

D. ~~Notwithstanding the exclusions provided herein, the~~ The purchasing policies and procedures of the Oklahoma Ordnance Works Authority, the University Hospitals Authority, and the Midwestern Oklahoma Development Authority shall be subject to approval by the

Director of the Department of Central Services, and said Director shall make periodic audits of the purchasing policies and procedures of the Oklahoma Ordnance Works Authority, the University Hospitals Authority, and the Midwestern Oklahoma Development Authority to ensure that said purchasing policies and procedures, as approved, are being followed.

SECTION 4. This act shall become effective July 1, 1998.

SECTION 5. 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.

46-2-11622 KSM