

ENROLLED HOUSE
BILL NO. 1882

By: Hamilton, Settle and
Braddock of the House

and

Haney, Hobson, Kerr and
Capps of the Senate

An Act relating to agriculture; amending Sections 5, 7 and 8, Chapter 198, O.S.L. 1993 (2 O.S. Supp. 1996, Sections 3-50.5, 3-50.7 and 3-50.8), and Section 9, Chapter 198, O.S.L. 1993 (2 O.S. Supp. 1996, Section 3-50.9), as amended by Section 1 of Enrolled House Bill No. 1633 of the 1st Session of the 46th Oklahoma Legislature, which relate to the Boll Weevil Eradication Act; modifying purpose; creating a boll weevil eradication district; making the Oklahoma Boll Weevil Eradication Organization an agency of the state; adding and modifying powers and duties of the board of directors; authorizing the borrowing of monies and issuance of bonds; specifying certain limitations and restrictions; providing for purpose for issuance; making state not liable for payment of bonds; providing for payment; authorizing certain pledges; authorizing certain contracts; requiring certain form and information; authorizing Attorney General to review and certify issuance; making bonds prima facie valid, binding and incontestable in certain situations; limiting defense; authorizing certain investments; providing for certain applications to the Supreme Court; requiring certain notices and hearings; providing for certain information; providing force and effect of certain judicial determinations; defining term; making certain persons not personally liable for issuance of certain bonds; requiring certain persons to make annual certifications to the board of directors regarding number of acres in the program; providing for referendum; requiring Attorney General to make certain review; making certain approval incontestable; clarifying certain responsibilities; providing for liens; providing for procedures; providing for recordation; providing for certain statements; specifying contents; authorizing foreclosure; requiring certain filings; providing for composition of assessments by certain persons; prohibiting multiple assessments; providing for collection; requiring certain notification; providing procedures for collection; authorizing certain reliance; relieving certain persons from liability; amending Section 1, Chapter 221, O.S.L. 1994 (19 O.S. Supp. 1996, Section 266), which relates to certain fees charged by county clerks; adding exception; providing for recodification;

providing for codification; 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 (2 O.S. Supp. 1996, Section 3-50.5), is amended to read as follows:

Section 3-50.5 A. 1. There is hereby ~~authorized the formation of~~ 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.

~~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~~ 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. 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~~ 3-50.6 of this ~~act~~ 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 (2 O.S. Supp. 1996, Section 3-50.7), is amended to read as follows:

Section 3-50.7 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~~ 3-50.9 of this ~~act~~ 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;

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; ~~and~~

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

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

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

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

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

19. 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. 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.

~~B.~~ 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.

~~C.~~ E. 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.~~ 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.

~~E.~~ 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 Section 8, Chapter 198, O.S.L. 1993 (2 O.S. Supp. 1996, Section 3-50.8), is amended to read as follows:

Section 3-50.8 Every person growing cotton in this state shall annually certify to the board of directors the number of acres in the program in such manner as required by the board of directors and shall furnish to the board of directors such other 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 4. AMENDATORY Section 9, Chapter 198, O.S.L. 1993 (2 O.S. Supp. 1996, Section 3-50.9), as amended by Section 1 of Enrolled House Bill No. 1633 of the 1st Session of the 46th Oklahoma Legislature, is amended to read as follows:

Section 3-50.9 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 (2) of the three

(3) 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.

Upon receipt of all the ballots, the board of directors shall count the ballots for and against the assessment as prescribed in the bylaws and submit a complete transcript of the election to the Oklahoma Attorney General for review. Upon approval of the election transcript by the Attorney General, the election shall become incontestable in any court in the State of Oklahoma unless such shall be brought in a court having jurisdiction of the matter within thirty (30) days of such approval.

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 a boll weevil eradication referendum is approved, the board of directors shall ~~collect~~ provide for the collection of the annual 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 at state expense. Additional referenda may be conducted as necessary by the board of directors from any other funds available to the board of directors. Such other referenda 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. 1. 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, except as otherwise provided by subsection K of this section, shall be paid from any funds available to the organization.

2. For any referendum proposing to terminate the assessment, the ballots must inform the eligible voters that even though the termination of the assessment may be approved by the eligible voters, the assessment shall continue to be paid until all outstanding bonds or other obligations of the ~~district~~ Organization have ~~been~~ expired or been retired.

3. Upon the determination by the board of directors that the boll weevil assessment has been terminated, pursuant to this subsection, the board of directors shall provide notice of such termination to the Commissioner. Any such notice shall include documentation of the termination of the assessment and a plan for expiring all of the organization's outstanding obligations. In the event a referendum results in the termination of the eradication program, the assessment shall continue to be paid by the existing membership of the eradication district until any outstanding

obligations are expired. Upon the completion of the expiration of all outstanding obligations of the organization, the board of directors shall file a financial final report with the Commissioner showing payment of such obligations.

M. 1. ~~The Department or~~ board of directors or the Department if the board of directors is unable to comply with the provisions of this section shall, upon filing, have a lien for the value of such assessment or treatment on the cotton production of the cotton grower in the district. The lien shall be superior and paramount, whether in time or not, to that of all persons having an interest in such real property and shall continue until the total assessment, due and owing, is paid.

2. ~~The Department or board of directors, as applicable, shall file and such lien shall be enforced as is otherwise provided by Section 47 of Title 42 of the Oklahoma Statutes~~ lien created by this section shall not be effective unless:

- a. a verified statement is filed by the board of directors in the office of the county clerk of the county where the land on which the cotton is growing or to be grown is located within one hundred twenty (120) days after the treatment on the cotton production has been applied or the assessment is required to be paid. The statement shall be recorded by the county clerk in the same manner as other filings required by Title 12A of the Oklahoma Statutes. The statement shall contain the following:
 - (1) the name and address of the person to whom the treatment was furnished,
 - (2) the name and address of the supplier,
 - (3) the legal description of the land on which the cotton is growing or to be grown, and
 - (4) a description and value of the services provided or the amount of assessment due and owing, and
- b. a verified statement is filed by the board of directors in the office of the Secretary of State of the State of Oklahoma with the name of each cotton producer and the other relevant information set forth in subparagraph a of this paragraph.

3. The lien created by this section may be foreclosed by the sale of the cotton subject to the lien anytime within twelve (12) months after the filing of the lien in accordance with the provisions of this section.

4. The board of directors shall file the verified statements specified by this subsection annually during the course of the program.

5. The verified statements may list all of the information on a single affidavit for each county. The verified statement filed with the Secretary of State may also cover all of the cotton producers involved in the program on one affidavit.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-50.9a of Title 2, unless there is created a duplication in numbering, reads as follows:

A. 1. The assessment imposed pursuant to the provisions of the Boll Weevil Eradication Act shall be levied on a cotton producer at the time of sale and shall be collected and remitted to the board of directors by the cotton gin serving as the selling agent for the cotton produced.

2. Pursuant to the provisions of the Boll Weevil Eradication Act no cotton shall be subject to assessment of a fee more than once.

B. 1. The cotton gin serving as selling agent for the cotton producer shall collect the assessment in the same manner as ginning costs are deducted from the purchase price of the cotton or from any funds advanced for that purpose.

2. The board of directors, by registered or certified mail, shall notify each cotton gin of the duty to collect the assessment, the manner in which the assessment is to be collected, and the date on or after which the cotton gin is to begin collecting the assessment.

3. The amount of the assessment collected shall be clearly shown on the sales invoice or other document evidencing the transaction. The cotton gin, as the seller's agent, shall furnish a copy of the document to the cotton producer.

C. 1. The cotton gin may rely upon the information or certification provided by the board of directors to the cotton gin regarding the number of cotton acres and other related information as deemed necessary by the board of directors in determining the amount of assessment due and owing from the cotton producer.

2. A cotton gin collecting an assessment from a cotton producer based upon information or a certification provided by the board of directors regarding such cotton producer shall be relieved of any liability for any errors or omissions in such assessment should it later be determined that the assessment was inaccurate.

SECTION 6. AMENDATORY Section 1, Chapter 221, O.S.L. 1994 (19 O.S. Supp. 1996, Section 266), is amended to read as follows:

Section 266. The county clerk may charge any state agency or other state governmental entity, except child support enforcement offices operated by or for the benefit of the Oklahoma Department of Human Services ~~and~~, rural water districts organized 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 and the Oklahoma Boll Weevil Eradication Organization for liens filed pursuant to the Boll Weevil Eradication Act, the usual and customary fee for filing any document with the county clerk and may charge the usual and customary fee for making copies of any document.

SECTION 7. RECODIFICATION Section 1 of Enrolled House Bill No. 1516 of the 1st Session of the 46th Oklahoma Legislature, shall be recodified as Section 3-50.30 of Title 2 of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 8. This act shall become effective July 1, 1997.

SECTION 9. 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 29th day of May, 1997.

Speaker of the House of
Representatives

Passed the Senate the 29th day of May, 1997.

President of the Senate