

ENROLLED SENATE  
BILL NO. 420

By: Price, Crutchfield and  
Martin of the Senate

and

Turner of the House

An Act relating to agriculture; creating the Oklahoma Agricultural Commodity Referendum Act; citing act; stating purpose of act; defining terms; providing procedures for petition for certification as an organization authorized to conduct an assessment referendum and election of a commodity producers board; providing content; providing for notice; providing for public hearing to consider the petition; providing for the Commissioner of the State Department of Agriculture to determine and certify the organization is representative of the producers of the commodity; authorizing certain organizations to conduct the assessment referendum and board election; providing for public notice; setting estimated amount and basis of the proposed assessment; providing for certain exemption; setting procedure for collection of assessment; providing for referendum and election on a statewide basis; specifying eligibility to vote; specifying eligibility for membership on the board; providing for candidate's name on the ballot; providing for write-in candidates on the ballot; providing for distribution of ballots; providing for certification of volume of voter's production on the ballot; providing for expenses incurred in connection with the referendum and election; authorizing certain exemptions; authorizing the Commissioner to determine if certain ballots are void; providing for the determination of the returns of a referendum and election; providing for the certification of the adoption of the referendum proposition; providing for the certification of the defeat of the referendum proposition; providing for elections for electing members of certain boards; providing for boards to be established; authorizing boards to have certain powers and duties; providing for organization of certain commodity producers boards; providing for terms of office; authorizing the board to elect certain officers; requiring certain officers to execute a corporate surety bond; setting requirements for actions of the board; stating certain powers and duties of the board; providing for certain budget review and expenditure of funds; making funds not state monies or subject to certain requirements; making board debts or obligations not

debts or obligations of the state; providing for audits; providing for certain reports; authorizing the board to receive certain funds; providing for certain expenditures; authorizing the processor to collect assessments at the first point of sale; providing for collection of certain assessments; stating no commodity shall be subject to fees more than once per growing season; providing for refunds; providing for propositions to increase maximum rate of assessment; providing for referendum to increase assessment; providing for referendum to discontinue assessments; providing for notice of referendum and election; providing for certain proceedings for recovery of assessments in certain conditions; providing for certain violations; providing for certain exemptions; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-60.10 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 "Oklahoma Agricultural Commodity Referendum Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-60.11 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. The purpose of the Oklahoma Agricultural Commodity Referendum Act is to authorize and prescribe the necessary procedures by which the producers of agricultural commodities grown in this state may establish agricultural commodity producers boards to finance programs devised to alleviate any circumstance or condition that serves to impede the production, marketing, research or use of agricultural commodities.

B. Agriculture commodity producers boards established pursuant to the Oklahoma Agricultural Commodity Referendum Act shall not be agencies of the state.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-60.12 of Title 2, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Agricultural Commodity Referendum Act:

1. "Agricultural commodity" means an agricultural commodity, horticultural commodity, silvicultural commodity, or agricultural product, horticultural product, viticulture, or silvicultural product, or bees and honey, planting seed, rice, livestock or

livestock product, or poultry or poultry product, produced in this state, either in its natural state or as processed by the producer;

2. "Board" means an agricultural commodity producers board;

3. "Commissioner" means the Commissioner of the State Department of Agriculture;

4. "District" means a geographical area within the jurisdiction of a board;

5. "Processor" means a person who:

- a. is a purchaser, warehouseman, processor, or other commercial handler of an agricultural commodity, or
- b. is engaged in the operation of packing, grading, selling, offering for sale or marketing any agricultural commodity in commercial quantities as defined in a marketing program, who as owner, agent, or otherwise, ships or causes agricultural commodities to be shipped;

6. "Producer" means a person engaged in the business of producing or causing to be produced for commercial purposes an agricultural commodity. The term "producer" includes the owner of a farm on which the commodity is produced and the owner's tenant or sharecropper;

7. "Person" means an individual, firm, corporation, association, or any other business entity;

8. "Secretary-treasurer" means the secretary-treasurer of a board;

9. "Certified organization" means the agricultural commodity entity certified by the State Department of Agriculture to conduct a referendum; and

10. "Volume of production" shall be defined by the certified organization and can refer to units of product sold such as pounds, bushels, gallons, flats, containers, packages, or other commonly recognized units of measure, square footage or acreage of production space or other appropriate measurement units, or number of production units such as trees, vines, head count of livestock or poultry, or other commonly recognized measurement units, or gross sales.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-60.13 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. 1. Any nonprofit organization authorized under the laws of this state representing the producers of an agricultural commodity may petition the Commissioner of the State Department of Agriculture for certification as the organization authorized to establish a

commodity producers board and conduct an assessment referendum pursuant to the Oklahoma Agricultural Commodity Referendum Act.

2. The petition shall state:

- a. the reasons for and the purposes of the commodity producers board,
- b. the number of board members and board organization,
- c. propose either a six-member, nine-member, twelve-member or fifteen-member board and whether board members will be appointed by district or appointed at large,
- d. the maximum assessment to be levied pursuant to an election, and
- e. such other information required by the commissioner;

3. The petition shall be signed by at least twenty percent (20%) of the commodity producers in the state or at least two hundred commodity producers, whichever is less.

B. 1. Within fifteen (15) days following the day on which a petition for certification is received, the Commissioner shall schedule a public hearing to consider the petition. The public hearing shall be scheduled no later than forty (40) days after receipt of the completed petition is received by the Department.

2. Upon the scheduling of the public hearing, the nonprofit organization shall provide for notification of interested commodity producers in the manner, method and locations required by the State Department of Agriculture.

3. If the Commissioner determines that, on the basis of testimony presented at the public hearing, the petitioning organization is representative of the producers of the agricultural commodity and that the petition conforms to the purposes and provisions of the Oklahoma Agricultural Commodity Referendum Act, the Commissioner shall certify that the organization is representative of the producers of the commodity and is authorized to establish the commodity producers board and to conduct the board election and assessment referendum.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-60.14 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. A certified organization may establish a commodity producers board and conduct an election of members to the commodity producers board for the commodity. The ballot shall also provide for a referendum of the producers of an agricultural commodity on the proposition of whether or not the producers shall levy an assessment on themselves to finance programs of research, disease and insect control, predator control, education, or promotion designed to

encourage the production, marketing, and use of the commodity. The certified organization shall give public notice of:

1. The date, hours, and polling places for voting in the referendum and election;

2. The estimated amount and basis of the assessment proposed to be collected;

3. Whether a producer exemption is to be allowed in accordance with Section 9 of this act; and

4. A description of the manner in which the assessment is to be collected and the proceeds administered and used.

B. The notice under subsection A of this section shall be published in one or more newspapers published and distributed within the boundaries described in the petition. The notice shall be published for not less than once a week for three (3) consecutive weeks, beginning at least sixty (60) days before the date of the election. In addition, at least sixty (60) days before the date of the election, the certified organization shall give direct written notice to each county extension educator in any county within the boundaries described in the petition.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-60.15 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Subject to the approval of the Commissioner of the State Department of Agriculture, the certified organization shall conduct the election and referendum on a statewide basis.

B. A producer of the agricultural commodity is eligible to vote in the election and referendum if:

1. The producer's production occurs within the state; and

2. The producer would be required under the referendum to pay the assessment.

C. Any producer who is eligible to vote at the election and referendum is eligible to be a member or a candidate for membership on the commodity producers board.

D. A potential candidate must file with the certified organization an application to have the name of such potential candidate printed on the ballot. The application must be signed by the candidate and by at least ten producers who are eligible to vote at the election. The application must be filed at least thirty (30) days before the date set for the election.

E. A voter may vote for board members by writing in the name of any eligible person whose name is not printed on the ballot.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-60.16 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. The certified organization shall prepare and distribute all necessary ballots in advance of the referendum and election and shall cause ballots to be available at all polling places.

B. The referendum provisions of the ballot shall specify a maximum rate for the authorized assessment.

C. The election provisions of the ballot may be printed only with the names of candidates who have filed valid petitions under Section 6 of this act, but the ballot shall provide a space for write-in votes.

D. The ballot shall provide a space for the voter to certify the volume of the voter's production of the commodity during the preceding year or other relevant production period, as designated on the ballot.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-60.17 of Title 2, unless there is created a duplication in numbering, reads as follows:

The certified organization is responsible for all expenses incurred in connection with the referendum and election, but it may be reimbursed for actual and necessary expenses out of funds deposited in the treasury of the commodity producers board if the assessment is levied and collected.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-60.18 of Title 2, unless there is created a duplication in numbering, reads as follows:

The original referendum and subsequent biennial board elections may provide exemptions for producers from payment of the assessment if the exemptions are included in full written form on the election ballot and are approved by:

1. Two-thirds or more of those voting in the election; or
2. More than one-half of those voting in the election and those voting in favor of the proposition produce at least fifty percent (50%) of the volume of production of the commodity during the relevant production period.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-60.19 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. In any contest of an election, a ballot is void if the voter overstated the volume of production of the producer by more than ten percent (10%). Any other error in stating volume of production is not grounds for invalidating the ballot.

B. If a ballot is void or if any other error is made in stating production volume, the returns shall be corrected and the results adjusted accordingly.

C. In the original referendum election, the Commissioner of the State Department of Agriculture shall be authorized and is responsible for making the determination if a ballot is void due to overstatement of production volume. In any subsequent referendum elections the individual commodity producer boards are authorized and shall be responsible for making such determination.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-60.20 of Title 2, unless there is created a duplication in numbering, reads as follows:

Upon receiving the report of the returns of an election and referendum, the Commissioner of the State Department of Agriculture shall determine:

1. The number of votes cast for and against the referendum proposition;

2. The total volume of production of the commodity during the relevant production period;

3. The percentage of the total volume of production of the commodity that was produced by those voting in favor of the referendum proposition; and

4. The appropriate number of candidates receiving the highest number of votes for membership on the commodity producers board.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-60.21 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. In a referendum election, if the Commissioner of the State Department of Agriculture finds that either of the two conditions set forth in subsection B of this section are met, the Commissioner shall publicly certify the adoption of the referendum proposition and issue certificates of election to those persons elected to the board. Otherwise the Commissioner shall certify that the referendum proposition was defeated.

B. The referendum proposition will be adopted upon a finding that:

1. Two-thirds or more of those voting in the election voted in favor of the referendum proposition; or

2. More than one-half of those voting in the election voted in favor of the referendum proposition, and those voting in favor of the proposition produced at least fifty percent (50%) of the volume of the production of the commodity during the relevant production period.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-60.22 of Title 2, unless there is created a duplication in numbering, reads as follows:

A commodity producers board shall conduct biennial elections for the purpose of electing members to the board. The board shall give notice and hold the election in accordance with the applicable provisions of the Oklahoma Agricultural Commodity Referendum Act relating to the initial election and, to the extent necessary, in accordance with the rules of the Commissioner of the State Department of Agriculture.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-60.23 of Title 2, unless there is created a duplication in numbering, reads as follows.

If the Commissioner of the State Department of Agriculture certifies adoption of a referendum proposition under Section 12 of this act, the commodity producers board is established and has the powers and duties prescribed by the Oklahoma Agricultural Commodity Referendum Act.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-60.24 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. On receiving certificates of election from the Commissioner of the State Department of Agriculture, the members of the commodity producers board shall meet and organize.

B. Members of the initial board shall draw lots so that one-third (1/3) of the members shall hold office for two (2) years, one-third (1/3) for four (4) years, and one-third (1/3) for six (6) years. Thereafter, members of the board shall serve for terms of six (6) years.

C. Each member holds office until a successor is elected and has qualified.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-60.25 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. The commodity producers board shall elect from its members a chair, a secretary-treasurer, and other officers that it considers necessary.

B. The secretary-treasurer shall execute a corporate surety bond in an amount required by the board. The bond shall be conditioned on the secretary-treasurer faithfully accounting for all money that comes into the custody of the officer. The bond shall be filed with the Commissioner.

C. The board shall fill any vacancy on the board by appointment for the unexpired term.

D. A majority vote of all members present is necessary for an action of the board to be valid.

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

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-60.26 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. The commodity producers board shall have the power and duty to:

1. Employ personnel deemed necessary by the board, fix the amount and manner of their compensation, and incur other expenses that are necessary and proper to enable the board to effectively carry out the purposes of the Oklahoma Agricultural Commodity Referendum Act;

2. Adopt rules as necessary to promptly and effectively administer the Oklahoma Agricultural Commodity Referendum Act;

3. Retain legal counsel as is required to fulfill the purposes of the Oklahoma Agricultural Commodity Referendum Act;

4. Sue and be sued;

5. Initiate prosecution and civil remedies necessary to collect any assessments due and owing to the commodity producers board;

6. Cooperate with local, state or national organizations, whether public or private, in carrying out the purposes of contracts as may be necessary;

7. Make such reasonable expenditures of funds as is necessary to carry out the provisions of the Oklahoma Agricultural Commodity Referendum Act;

8. Call and conduct such meetings and elections as may be necessary in carrying out the provisions of the Oklahoma Agricultural Commodity Referendum Act;

9. Keep minutes of its meetings and other books and records that clearly reflect all acts and transactions of the board. The board shall open its records to examination by any participating producer during regular business hours; provided, the board may determine by rule that certain information provided by a commodity producer is proprietary and is confidential;

10. Set the rate of the assessment. The rate may not exceed the maximum established in the election authorizing the assessment or a subsequent election establishing a maximum rate;

11. Act separately or in cooperation with any person in developing, carrying out, and participating in programs of research, disease and insect control, predator control, education, and

promotion designed to encourage the production, marketing, and use of the commodity on which the assessment is levied; and

12. Exercise such other powers as necessary to carry out the purposes of the Oklahoma Agricultural Commodity Referendum Act.

B. The Commissioner of the State Department of Agriculture shall promulgate rules for the establishment of commodity producer boards pursuant to the Oklahoma Agricultural Commodity Referendum Act. The rules shall ensure that such commodity producer boards are established and administered in a uniform manner.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-60.27 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. The commodity producers board shall file with the Director of the Market Development Division of the State Department of Agriculture a proposed budget and may expend funds only after the division director has approved the budget. If after thorough review the division director disapproves the proposed budget, the proposed budget shall be returned to the submitting board not later than forty-five (45) days after the date on which the proposed budget is submitted with a statement of reasons for disapproval.

B. Accounts of the board are subject to audit by the State Auditor and Inspector.

C. Within thirty (30) days following the end of each fiscal year of the board, the board shall submit to the Director of the Market Development Division of the State Department of Agriculture a report itemizing all income and expenditures and describing all activities of the board during the previous fiscal year.

D. Funds collected by the commodity producers board pursuant to the Oklahoma Agricultural Commodity Referendum Act shall not be subject to state budget and expenditure limitations. Such funds shall at no time become monies of the state or become part of the general budget of the state. Debts or obligations of the board shall not be construed to be debts or obligations of this state.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-60.28 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. The board is authorized to receive assessments as provided for in the Oklahoma Agricultural Commodity Referendum Act, donations from any source and grants from governmental agencies.

B. Money received by the board may be expended for the purpose of implementing the provisions of the Oklahoma Agricultural Commodity Referendum Act.

C. Funds assessed and collected under this act shall not be expended for use directly or indirectly to promote or oppose the election of any candidate for public office or to influence legislation.

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-60.29 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. The processor at the first point of sale determined by the board shall collect the assessment. Except as provided by subsection B of this section, the processor at that point shall collect the assessment by deducting the appropriate amount from the purchase price of the commodity or from any funds advanced for that purpose.

B. If the producer and processor are the same legal entity, or if the producer retains ownership after processing, such entity shall remit the assessment at the time of first sale of the commodity.

C. The secretary-treasurer of the commodity producers board, by registered or certified mail, shall notify each processor 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 processor is to begin collecting the assessment.

D. The amount of the assessment collected shall be clearly shown on the sales invoice or other document evidencing the transaction. The processor shall furnish a copy of the document to the producer.

E. Unless otherwise provided by the original referendum, no later than the tenth day of each month the processor shall remit the amount collected during the previous month to the secretary-treasurer of the board.

F. No commodity shall be subject to the applicable fee more than once per growing season.

SECTION 21. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-60.30 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. A producer who has paid an assessment may obtain a refund of the amount paid by filing an application for refund with the secretary-treasurer of the commodity producers board within sixty (60) days after the date of payment. The application must be in writing, on a form prescribed by the board for that purpose, and accompanied by proof of payment of the assessment.

B. The secretary-treasurer shall pay the refund to the producer before the eleventh day of the month following the month in which the application for refund and proof of payment are received.

SECTION 22. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-60.31 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. At any biennial election of the commodity producers board, the board may submit to the voters a proposition to increase the

maximum rate of assessment. The proposition is approved and the new maximum rate is in effect if:

The referendum proposition will be adopted upon a finding that:

1. Two-thirds or more of those voting in the election voted in favor of the referendum proposition; or

2. More than one-half of those voting in the election voted in favor of the referendum proposition, and those voting in favor of the proposition produced at least fifty percent (50%) of the volume of the production of the commodity during the relevant production period.

B. 1. If twenty percent (20%) or more of the producers participating in the program present to the secretary-treasurer a petition calling for a referendum of the qualified voters on the proposition of discontinuing the assessment, the board shall conduct a referendum for that purpose. An election on a proposition of discontinuing the assessment shall be held no more than once per year.

2. The board shall give notice of the referendum, the referendum shall be conducted, and the results shall be declared in the manner provided by law for the original referendum and election, with any necessary exceptions provided by rule promulgated pursuant to the Oklahoma Agricultural Commodity Referendum Act.

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

4. The proposition shall be approved if:

a. two-thirds or more of those voting in the election voted in favor of the referendum proposition, or

b. more than one-half of those voting in the election voted in favor of the referendum proposition, and those voting in favor of the proposition produced at least fifty percent (50%) of the volume of the production of the commodity during the relevant production period.

C. If the proposition is approved, the assessment is abolished.

SECTION 23. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-60.32 of Title 2, unless there is created a duplication in numbering, reads as follows:

The commodity producers board may investigate conditions that relate to the prompt remittance of the assessment by any producer or processor. If the board determines that a person has failed to remit to the board the assessment as required by the Oklahoma Agricultural Commodity Referendum Act, the board may independently institute proceedings for recovery of the amount due to the board or for injunctive or other appropriate relief.

SECTION 24. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-60.33 of Title 2, unless there is created a duplication in numbering, reads as follows:

A violation of any provision of the Oklahoma Agricultural Commodity Referendum Act is unlawful and may be enjoined by a district court of competent jurisdiction. In any action brought by a board which results in an injunction against a person and the court determines that such person has violated any provision of the Oklahoma Agricultural Commodity Referendum Act, the court shall award costs and attorney fees to the board.

SECTION 25. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-60.34 of Title 2, unless there is created a duplication in numbering, reads as follows:

All commissions and assessments established before July 1, 1999, are exempt from the requirements and provisions of the Oklahoma Agricultural Commodity Referendum Act.

SECTION 26. This act shall become effective July 1, 1999.

SECTION 27. 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 Senate the 19th day of April, 1999.

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President of the Senate

Passed the House of Representatives the 31st day of March, 1999.

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Speaker of the House of Representatives

