

STATE OF OKLAHOMA

2nd Session of the 47th Legislature (2000)

HOUSE BILL HB2567

By: Braddock and Benson

AS INTRODUCED

An Act relating to agriculture; amending Section 5, Chapter 198, O.S.L. 1993, as last amended by Section 1, Chapter 253, O.S.L. 1998, Section 8, Chapter 198, O.S.L. 1993, as amended by Section 3, Chapter 381, O.S.L. 1997, Section 9, Chapter 198, O.S.L. 1993, as last amended by Section 4, Chapter 381, O.S.L. 1997, Section 5, Chapter 381, O.S.L. 1997, Section 11, Chapter 198, O.S.L. 1993 and Section 17, Chapter 198, O.S.L. 1993 (2 O.S. Supp. 1999, Sections 3-50.5, 3-50.8, 3-50.9, 3-50.9a, 3-50.11 and 3-50.17), which relate to the Boll Weevil Eradication Act; subjecting all cotton growers to act; limiting voting rights; making the Oklahoma Boll Weevil Eradication Organization an agency of the state; specifying date for certification of number of acres; requiring additional information; providing for filing of liens; providing procedures for filing; providing for payments of annual assessments; requiring certain reports and information; providing for enforcement action and collection of assessment and administrative penalties; requiring promulgation of rules for administrative penalties; 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 last amended by Section 1, Chapter 253, O.S.L. 1998 (2 O.S. Supp. 1999, Section 3-50.5), is amended to read as follows:

Section 3-50.5 A. 1. ~~There is hereby created a~~ The State of Oklahoma shall contain one 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~~ as an agency of the State of Oklahoma. The Organization may enter into agreements with ~~the State of Oklahoma~~ other state agencies, other states, the ~~federal government~~ United States of

America and any other parties entity or party 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.

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~~ Every person who is a cotton grower in this state is subject to the provisions of the Boll Weevil Eradication Act; however, only eligible cotton growers may vote in the elections provided for by the Boll Weevil Eradication Act.

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 8, Chapter 198, O.S.L. 1993, as amended by Section 3, Chapter 381, O.S.L. 1997 (2 O.S. Supp. 1999, 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~~. The certification shall occur on or before July 15 of each year. The cotton grower shall also 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 any other information reasonably required to carry out the provisions of the Boll Weevil Eradication Act.

SECTION 3. AMENDATORY Section 9, Chapter 198, O.S.L. 1993, as last amended by Section 4, Chapter 381, O.S.L. 1997 (2 O.S. Supp. 1999, Section 3-50.9), 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 grower 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 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 Organization have 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 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~~ the cotton and shall continue until the total assessment, due and owing, is paid. In no event shall the lien be construed to be a lien on the real estate.

2. ~~The~~ Evidence of the 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 at any time before the assessment is required to be paid. The ~~statement~~ statements shall be recorded by the county clerk ~~in the same manner as other filings required by~~ in the mechanics and materialmans lien docket rather than pursuant to the provisions of Article 9 of Title 12A of the Oklahoma Statutes. The statement shall contain the following:

(1)

a. the name and address of the person to whom the treatment was furnished,

~~(2) the name and address of the supplier,~~

~~(3)~~

b. the legal description of the land on which the cotton is growing or to be grown, and

~~(4)~~

c. a description and value of the services provided or the amount of assessment due and owing, ~~and.~~

If the actual assessment is unknown, the board of directors may simply note the fact that the assessment is a specific amount per acre and one cent (\$.01) per lint pound

~~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~~ Each cotton grower shall pay the annual assessment imposed upon the sale of the cotton. Any lien authorized by the Boll Weevil Eradication Act shall continue until the assessment is paid in full.

~~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 4. AMENDATORY Section 5, Chapter 381, O.S.L. 1997 (2 O.S. Supp. 1999, Section 3-50.9a), is amended to read as follows:

Section 3-50.9a A. 1. The assessment imposed pursuant to the provisions of the Boll Weevil Eradication Act shall be levied on a cotton ~~producer~~ grower 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. The cotton gins shall furnish monthly reports to the Board of Directors on or before the tenth day of each month regarding the assessments collected, pay all of the assessments collected each month, and furnish the Board with any other information reasonably requested by it to ensure the collection of the assessments for each grower.

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~~ grower 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~~ grower.

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~~ grower.

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

D. The provisions contained in this section apply to all cotton gins located in the State of Oklahoma or in any other state.

SECTION 5. AMENDATORY Section 11, Chapter 198, O.S.L. 1993 (2 O.S. Supp. 1999, Section 3-50.11), is amended to read as follows:

Section 3-50.11 A. The board of directors may request the State Department of Agriculture to provide for the collection of the assessment or for other enforcement action necessary as determined by the board of directors for violations of the Boll Weevil Eradication Act and for collection of an any administrative penalty from any person who fails to pay an assessment when due pursuant to is determined to have violated any provision of the Boll Weevil Eradication Act.

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

SECTION 6. AMENDATORY Section 17, Chapter 198, O.S.L. 1993 (2 O.S. Supp. 1999, Section 3-50.17), is amended to read as follows:

Section 3-50.17 A. The State Department of Agriculture is authorized to promulgate rules, including but not limited to:

1. Quarantining this state, or any portion thereof;

2. Governing the storage or other handling in the quarantined areas of regulated articles and the movement of regulated articles into or from such areas, when the Department determines that such action is necessary, or reasonably appears necessary, to prevent, eradicate, or retard the spread of boll weevils; and

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

~~4. Establishing~~ B. 1. The Department shall promulgate rules establishing a reasonable schedule of administrative penalties for violations of the Boll Weevil Eradication Act.

~~B. 2.~~ Any rules promulgated pursuant to the Boll Weevil Eradication Act shall be promulgated in accordance with the Administrative Procedures Act.

SECTION 7. 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.

47-2-7846            KSM            6/12/15