ENGROSSED HOUSE
BILL NO. 1229

By: Braddock of the House

and

Kerr of the Senate

An Act relating to agriculture; amending 2 O.S. 2001, Sections 3-50.7, 3-50.8, 3-50.9a and 3-50.11, which relate to Boll Weevil Eradication Act; modifying audit procedures; modifying acreage certification; modifying assessment procedures; modifying certain penalties; and providing an effective date.

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

SECTION 1. AMENDATORY 2 O.S. 2001, Section 3-50.7, is amended to read as follows:

Section 3-50.7 A. 1. Except as otherwise provided by this section, the board of directors of the Oklahoma Boll Weevil Eradication Organization shall be composed of five (5) cotton growers from this state, each of whom are elected from the five separate districts established by the initial board.

2. The terms of office of the elected board of directors, except as otherwise provided by this section, 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 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 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. Sue and be sued, implead and be impleaded, complain and defend in all courts;

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

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

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

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

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

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;

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;

21. Reexamine the number and composition of the existing election districts in order to ensure fair and equitable geographic areas based upon cotton production density. If the board of directors determine that either the number or composition or both the number and composition of the election districts should be reestablished, the board of directors shall:

a. fairly and equitably establish the election districts necessary utilizing geographic areas based upon cotton production density as the primary factor,

b. conduct the election of the next board of directors and alternates consistent with subsection A of this section,

c. hold public hearings regarding the establishment of election districts,

d. facilitate the expeditious transfer of authority to the newly elected board of directors, and

e. establish initial terms of office for the new board consistent with subsection A of this section.

The duly elected board of directors shall have the same powers and duties as assigned to the original board of directors and such other powers and duties granted pursuant to the Boll Weevil Eradication Act; and

22. 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 all books, records of account and minutes of proceedings maintained by the Organization for inspection 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~~ when bonds are issued pursuant to the Boll Weevil Eradication Act. When bonds are not issued, the board of directors shall comply with the reporting requirements of paragraph 2 of this subsection;

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 2. AMENDATORY 2 O.S. 2001, 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 <u>and provide the legal description and the Farm Services Agency (FSA) numbers of the United States Department of Agriculture for each field</u>. The certification shall occur on or before July 20 of each year. The cotton grower shall also furnish to the board of directors ~~information concerning the~~ ~~location of all cotton fields~~ ~~and~~ any other information reasonably required to carry out the provisions of the Boll Weevil Eradication Act.

SECTION 3. AMENDATORY 2 O.S. 2001, 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 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 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 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 grower.

2. A cotton gin collecting an assessment from a cotton grower based upon information or a certification provided by the board of directors regarding such cotton 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.

3. Every cotton grower shall keep accurate production records on the amount of cotton ginned and the number of acres planted and harvested for a minimum of two (2) years. Copies shall be furnished to any authorized agent of the board of directors at any time during reasonable business hours of the cotton grower, immediately upon request in person, or within ten (10) working days of a written request by mail, fax, e-mail, web site, or any other electronic media customarily used.

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

SECTION 4. AMENDATORY 2 O.S. 2001, 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 any administrative penalty from any person who is determined to have violated any provision of the Boll Weevil Eradication Act.

B. Failure by any person to comply with any provisions of the Boll Weevil Eradication Act may result in assessment of an administrative penalty of not less than One Hundred Dollars ($100.00) and not more than Ten Thousand Dollars ($10,000.00) for each violation.

C. 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 5. This act shall become effective November 1, 2005.

Passed the House of Representatives the 10th day of March, 2005.

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Presiding Officer of the House of Representatives

Passed the Senate the ____ day of _____, 2005.

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Presiding Officer of the Senate