

EHB 1229

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THE STATE SENATE
Wednesday, April 6, 2005

ENGROSSED

House Bill No. 1229

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.

1 3. Each district shall also elect an alternate to serve for one
2 or more of the following reasons:

- 3 a. the death of the director,
- 4 b. the resignation of the director,
- 5 c. the incapacity of the director for a period of four
6 (4) consecutive months or more,
- 7 d. if the director's principal residence changes to a
8 location outside the district from which the director
9 was elected, or
- 10 e. if the director is removed from office by a majority
11 vote of the board of directors for cause. Causes for
12 removal include the following:
 - 13 (1) neglect of duty,
 - 14 (2) willful misconduct,
 - 15 (3) malpractice in office,
 - 16 (4) self-dealing,
 - 17 (5) incompetency,
 - 18 (6) gross inefficiency, or
 - 19 (7) any other unbecoming conduct which can or may
20 affect the Organization's ability to
21 satisfactorily perform its duties or carry out
22 its mission as a public body or otherwise⁷.

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

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

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

9 B. The board of directors shall have the power and duty to:

10 1. Conduct board elections in the event of a vacancy on the
11 board of directors;

12 2. Conduct assessment referenda pursuant to Section 3-50.9 of
13 this title;

14 3. Conduct programs consistent with the Boll Weevil Eradication
15 Act;

16 4. Develop a proposed maximum assessment for implementation of
17 the Boll Weevil Eradication Act. The assessment levied pursuant to
18 the Boll Weevil Eradication Act shall be determined upon a fair and
19 equitable system that is based upon cotton production and
20 infestation factors. The board of directors shall determine the
21 collection method and manner and the period of time for which the
22 assessment is to be levied pursuant to Section 3-50.9 of this title;

1 5. Develop bylaws for the due and orderly administration of the
2 affairs of the board of directors and for its responsibilities
3 specified pursuant to the provisions of the Boll Weevil Eradication
4 Act;

5 6. Develop, implement and pay for a plan for boll weevil
6 eradication in this state;

7 7. Advise, consult and cooperate with agencies of this state
8 and political subdivisions thereof, other states, the federal
9 government and with affected groups;

10 8. Collect and disseminate information relating to boll weevil
11 eradication;

12 9. Contract with agencies of this state and political
13 subdivisions thereof, other states, the federal government and other
14 organizations or persons to comply and fulfill its mission pursuant
15 to the provisions of the Boll Weevil Eradication Act;

16 10. Hold public hearings regarding the assessment referenda or
17 for other purposes consistent with the provisions of the Boll Weevil
18 Eradication Act;

19 11. Designate one or more areas of this state as "elimination
20 zones" where boll weevil eradication programs will be undertaken;

21 12. Sue and be sued, implead and be impleaded, complain and
22 defend in all courts;

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

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

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

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

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

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

14 a. Such bonds may:

15 (1) be issued in one or more series,

16 (2) bear such date or dates,

17 (3) mature at such time or times not exceeding twenty

18 (20) years from their date,

19 (4) be in such denomination or denominations,

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

21 (6) carry such registration and conversion
22 privileges,

23 (7) be executed in such manner,

- 1 (8) be payable in such medium of payment at such
2 place or places,
3 (9) be subject to such terms of redemption with or
4 without premium, and
5 (10) bear such rate or rates of interest, as may be
6 provided by resolution or resolutions to be
7 adopted by the Board within such limits provided
8 by law, and be sold in such manner and at such
9 price or prices as may be considered by the Board
10 to be advisable.
- 11 b. Bonds shall have all the qualities and incidents of
12 negotiable paper and the interest thereon shall not be
13 subject to taxation by the State of Oklahoma.
- 14 c. The board of directors may issue bonds pursuant to the
15 Boll Weevil Eradication Act for the purpose of
16 refunding any obligations of the board of directors,
17 or may authorize and deliver a single issue of bonds
18 hereunder for the purpose in part of refunding
19 obligations of the board.
- 20 d. The bonds issued pursuant to the Boll Weevil
21 Eradication Act shall not be an indebtedness of the
22 State of Oklahoma but shall be special obligations
23 payable solely from the assessments. The board of

1 directors is authorized and directed to pledge all or
2 any part of such assessments to the payment of and
3 interest on the bonds.

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

10 f. All bonds issued pursuant to the Boll Weevil
11 Eradication Act shall have on the backs thereof the
12 certificate required by Section 29 of Article 10 of
13 the Constitution of Oklahoma. Such bonds shall be
14 submitted to the Attorney General of Oklahoma for
15 examination. Such bonds, having been examined and
16 certified as legal obligations by the Attorney General
17 in accordance with such requirements as the Attorney
18 General may make, shall be incontestable in any court
19 in the State of Oklahoma unless suit thereon shall be
20 brought in a court having jurisdiction thereof within
21 thirty (30) days from the date of such approval.
22 Bonds so approved by the Attorney General shall be
23 prima facie valid and binding obligations according to

1 their terms. The only defense which may be offered
2 thereto in any suit instituted after such thirty-day
3 period shall have expired shall be a violation of the
4 Constitution.

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

9 19. File an application, at its discretion, with the Supreme
10 Court of Oklahoma for the validation of the Boll Weevil Eradication
11 Act or for the approval of any series of bonds to be issued
12 hereunder or any other actions to be taken by the board of
13 directors. Exclusive original jurisdiction is hereby conferred upon
14 the Supreme Court to hear and determine each such application.

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

20 b. Notice of the hearing on each application shall be
21 given by a notice published in a newspaper of general
22 circulation in the state that on a day named, the
23 board of directors will ask the court to hear its

1 application. Such notice shall inform all persons
2 interested that they may file protests against the
3 validation or approval and be present at the hearing
4 and contest the same. Such notice shall be published
5 one time, not less than ten (10) days prior to the
6 date named for the hearing, and the hearing may be
7 adjourned from time to time at the discretion of the
8 court.

9 c. In any action to approve bonds, if the Supreme Court
10 is satisfied that the bonds have been properly
11 authorized in accordance with the provisions of the
12 Boll Weevil Eradication Act and that when issued they
13 will constitute valid obligations in accordance with
14 their terms, the Supreme Court shall render its
15 written opinion approving the bonds and shall fix the
16 time within which a petition for rehearing may be
17 filed. The decision of the Supreme Court shall be a
18 judicial determination of the validity of the bonds,
19 shall be conclusive as to the board of directors, its
20 officers and agents, and thereafter the bonds so
21 approved and the revenues pledged to their payment
22 shall be incontestable in any court in the State of
23 Oklahoma;

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

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

- 13 a. fairly and equitably establish the election districts
14 necessary utilizing geographic areas based upon cotton
15 production density as the primary factor,
16 b. conduct the election of the next board of directors
17 and alternates consistent with subsection A of this
18 section,
19 c. hold public hearings regarding the establishment of
20 election districts,
21 d. facilitate the expeditious transfer of authority to
22 the newly elected board of directors, and

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

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

7 22. Take such other actions deemed necessary by the board of
8 directors to implement the provisions of the Boll Weevil Eradication
9 Act.

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

13 D. The bylaws established by the board of directors relating to
14 boll weevil eradication and the assessment referenda shall be
15 submitted to the State Board of Agriculture for determination as to
16 whether such bylaws will be promulgated as rules of the State Board
17 of Agriculture. Such bylaws may be promulgated in whole or in part
18 or may be returned for modification to the board of directors. The
19 State Board of Agriculture shall comply with the Administrative
20 Procedures Act in promulgating any rules adopted pursuant to the
21 provisions of this subsection.

22 E. The board of directors shall:

1 1. Make available all books, records of account and minutes of
2 proceedings maintained by the Organization for inspection by the
3 Office of the State Auditor and Inspector for an annual independent
4 audit ~~all books, records of account and minutes of proceedings~~
5 ~~maintained by the Organization~~ when bonds are issued pursuant to the
6 Boll Weevil Eradication Act. When bonds are not issued, the board
7 of directors shall comply with the reporting requirements of
8 paragraph 2 of this subsection;

9 2. Not later than forty-five (45) days after the last day of
10 the fiscal year, submit to the Commissioner a report itemizing all
11 income and expenditures and describing all activities of the
12 Organization during the fiscal year;

13 3. Provide surety bonds in amounts determined by the
14 Commissioner for employees or agents who handle funds for the
15 Organization;

16 4. Receive, hold in trust, and disburse all assessments and
17 other funds collected pursuant to the Boll Weevil Eradication Act as
18 trust funds of the Organization; and

19 5. Make available all books, records of account and minutes of
20 proceedings of the Organization for inspection or audit by the
21 Commissioner at any reasonable time.

22 F. 1. Pursuant to the authority granted by the Boll Weevil
23 Eradication Act, except for instances of gross negligence,

1 individual criminal actions or acts of dishonesty, the board of
2 directors and employees of the board of directors are not
3 individually liable to a cotton grower or other person for:

- 4 a. errors in judgment,
- 5 b. mistakes, or
- 6 c. omissions.

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

10 3. A member of the board of directors or an employee of the
11 board of directors is not individually liable for an act or omission
12 of another member or employee of the board of directors.

13 G. The board of directors shall serve without compensation but
14 are entitled to reimbursement for reasonable and necessary expenses
15 incurred in the discharge of their duties.

16 SECTION 2. AMENDATORY 2 O.S. 2001, Section 3-50.8, is
17 amended to read as follows:

18 Section 3-50.8 Every person growing cotton in this state shall
19 annually certify to the board of directors the number of acres in
20 the program and provide the legal description and the Farm Services
21 Agency (FSA) numbers of the United States Department of Agriculture
22 for each field. The certification shall occur on or before July 20
23 of each year. The cotton grower shall also furnish to the board of

1 directors ~~information concerning the location of all cotton fields~~
2 ~~and~~ any other information reasonably required to carry out the
3 provisions of the Boll Weevil Eradication Act.

4 SECTION 3. AMENDATORY 2 O.S. 2001, Section 3-50.9a, is
5 amended to read as follows:

6 Section 3-50.9a A. 1. The assessment imposed pursuant to the
7 provisions of the Boll Weevil Eradication Act shall be levied on a
8 cotton grower at the time of sale and shall be collected and
9 remitted to the board of directors by the cotton gin serving as the
10 selling agent for the cotton produced. The cotton gins shall
11 furnish monthly reports to the board of directors on or before the
12 tenth day of each month regarding the assessments collected, pay all
13 of the assessments collected each month, and furnish the board with
14 any other information reasonably requested by it to ensure the
15 collection of the assessments for each grower.

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

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

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

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

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

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

20 3. Every cotton grower shall keep accurate production records
21 on the amount of cotton ginned and the number of acres planted and
22 harvested for a minimum of two (2) years. Copies shall be furnished
23 to any authorized agent of the board of directors at any time during

1 reasonable business hours of the cotton grower, immediately upon
2 request in person, or within ten (10) working days of a written
3 request by mail, fax, e-mail, web site, or any other electronic
4 media customarily used.

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

7 SECTION 4. AMENDATORY 2 O.S. 2001, Section 3-50.11, is
8 amended to read as follows:

9 Section 3-50.11 A. The board of directors may request the
10 State Department of Agriculture to provide for the collection of the
11 assessment or for other enforcement action necessary as determined
12 by the board of directors for violations of the Boll Weevil
13 Eradication Act and for collection of any administrative penalty
14 from any person who is determined to have violated any provision of
15 the Boll Weevil Eradication Act.

16 B. Failure by any person to comply with any provisions of the
17 Boll Weevil Eradication Act may result in assessment of an
18 administrative penalty of not less than One Hundred Dollars
19 (\$100.00) and not more than Ten Thousand Dollars (\$10,000.00) for
20 each violation.

21 C. Any penalty collected pursuant to the provisions of this
22 section shall be deposited in the Boll Weevil Eradication Fund,

1 provided, the Department shall be reimbursed for any costs incurred
2 by the Department in the enforcement of this section.

3 SECTION 5. This act shall become effective November 1, 2005.

4 COMMITTEE REPORT BY: COMMITTEE ON AGRICULTURE & RURAL DEVELOPMENT,
5 dated 4-5-05 - DO PASS.