An Act

ENROLLED SENATE
BILL NO. 1851

By: Justice and Fields of the Senate

and

Biggs, Denney and Billy of the House

An Act relating to agriculture; creating the Commodity Research Enhancement Act; providing for short title; defining terms; authorizing nonprofit commodity organization to petition the Oklahoma Department of Agriculture, Food, and Forestry to request approval to conduct a state assessment referendum; providing for petition requirements and contents; requiring public hearing to consider petition; authorizing designated nonprofit commodity organizations to conduct certain referendum; requiring public notice; requiring referendum be conducted on a statewide basis; providing voter eligibility; directing nonprofit commodity organization to provide ballots; designating responsibility for referendum expenses; authorizing referendum to provide for certain exemptions; directing the Department to determine if ballot is void; directing the Commissioner of Agriculture to verify ballots and production volumes; directing the Commissioner to certify referendum outcome; delegating powers and duties to the federally approved commodity board; prohibiting commingling of funds; requiring submission of annual report; providing for applicability and construction of certain funds and debts; authorizing the commodity board to receive and expend certain monies; prescribing method of collection; providing for refund of the state assessment; authorizing petition for a certain referendum; providing for automatic

repeal of the state assessment under certain conditions; allowing the commodity board to investigate and recover the state assessments; providing for codification; and providing an effective date.

SUBJECT: Commodity Research Enhancement Act

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 5-63.1 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 "Commodity Research Enhancement Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-63.2 of Title 2, unless there is created a duplication in numbering, reads as follows:

As used in the Commodity Research Enhancement 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 federally approved commodity board;

3. "Commissioner" means the Commissioner of the Oklahoma Department of Agriculture, Food, and Forestry;

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

5. "Federally approved commodity board" means a board organized and sanctioned by the United States Department of Agriculture to receive a federal assessment for the specific commodity;

6. "Nonprofit commodity organization" means any organization representing commodity producers with the ability to seek a state assessment and designate a federally approved commodity board as the recipient;

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

8. "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;

9. "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; 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 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-63.3 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. 1. Any nonprofit commodity organization may petition the Commissioner of the Oklahoma Department of Agriculture, Food, and Forestry to request approval to conduct a state assessment referendum pursuant to the Commodity Research Enhancement Act.

2. The petition shall state:

a. the name of the nonprofit organization that will conduct the referendum,

b. the reasons for and the purposes of the state assessment,

c. the federally approved commodity board that will be designated by the nonprofit commodity organization as the recipient of the state assessment,

d. the maximum state assessment to be levied pursuant to an election,

e. the names and number of positions held by each nonprofit commodity organization on the federally approved commodity board, and

f. such other information required by the Commissioner.

3. The petition shall be signed by at least ten percent (10%) of the commodity producers in the state.

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 by the Department.

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

3. If the Commissioner determines that, on the basis of testimony presented at the public hearing, the petitioning nonprofit commodity organization is representative of the producers of the agricultural commodity and that the petition conforms to the purposes and provisions of the Commodity Research Enhancement Act, the Commissioner shall designate the nonprofit commodity organization as representative of the producers of the commodity and authorized to conduct the state assessment referendum.

4. The petitioning nonprofit commodity organization shall be responsible for all costs associated with the Commissioner's consideration of the petition.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-63.4 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. A designated nonprofit commodity organization may conduct a referendum of the producers of an agricultural commodity on the proposition of whether or not the producers shall levy a state 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 designated nonprofit commodity organization shall give public notice of:

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

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

3. Whether a producer exemption is to be allowed in accordance with Section 8 of this act; and

4. A description of the manner in which the state 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 designated nonprofit commodity organization shall give direct written notice to each county extension educator in any county within the boundaries described in the petition.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-63.5 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Subject to the approval of the Commissioner of the Oklahoma Department of Agriculture, Food, and Forestry, the designated nonprofit commodity organization shall conduct the referendum on a statewide basis.

B. A producer of the agricultural commodity is eligible to vote in the election and referendum if the producer would be required under the referendum to pay the state assessment.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-63.6 of Title 2, unless there is created a duplication in numbering, reads as follows:

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

B. The ballot shall specify a maximum rate for the authorized state assessment.

C. 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 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-63.7 of Title 2, unless there is created a duplication in numbering, reads as follows:

The designated nonprofit commodity organization is responsible for all expenses incurred in connection with the referendum.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-63.8 of Title 2, unless there is created a duplication in numbering, reads as follows:

The original referendum may provide exemptions for producers from payment of the state assessment if the exemptions are included in full written form on the election ballot and the referendum is adopted as outlined in Section 11 of this act.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-63.9 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 any referendum election, the Commissioner of the Oklahoma Department of Agriculture, Food, and Forestry shall be authorized and is responsible for making the determination if a ballot is void due to overstatement of production volume.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-63.10 of Title 2, unless there is created a duplication in numbering, reads as follows:

Upon receiving the report of the returns of the referendum, the Commissioner of the Oklahoma Department of Agriculture, Food, and Forestry 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; and

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

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-63.11 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. In a referendum election, if the Commissioner of the Oklahoma Department of Agriculture, Food, and Forestry 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. Otherwise, the Commissioner shall certify that the referendum proposition was defeated.

B. 1. The adoption of the referendum proposition will be subject to the referendum process outlined by the federally approved commodity board.

2. In the event that the federally approved commodity board does not have an outlined referendum process, the referendum proposition will be adopted upon finding that:

a. two-thirds (2/3) or more of those voting in the election voted in favor of the referendum proposition, or

b. more than one-half (1/2) 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. Upon certification of the referendum proposition, the designated federally approved commodity board shall be the recipient of any state assessment.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-63.12 of Title 2, unless there is created a duplication in numbering, reads as follows:

The federally approved commodity 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 Commodity Research Enhancement Act; such employees shall not be considered state employees for any purpose;

2. Retain legal counsel as is required to fulfill the purposes of the Commodity Research Enhancement Act;

3. Sue and be sued;

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

5. Make such reasonable expenditures of funds as are necessary to carry out the provisions of the Commodity Research Enhancement Act;

6. The board shall open its state assessment records to examination by any participating producer during regular business hours; provided, the board may determine that certain information provided by a commodity producer is proprietary and confidential;

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

8. 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 state assessment is levied; and

9. Exercise such other powers as necessary to carry out the purposes of the Commodity Research Enhancement Act.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-63.13 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. The federally approved commodity board shall not commingle funds derived from the state assessment with any other funds.

B. Within ninety (90) days following the end of each fiscal year of the board, the board shall submit to the Commissioner of the Oklahoma Department of Agriculture, Food, and Forestry a report itemizing all income and expenditures and describing all activities of the board during the previous fiscal year.

C. State assessment funds collected by the federally approved commodity board pursuant to the Commodity Research Enhancement 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 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-63.14 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. The board is authorized to receive state assessments as provided for in the Commodity Research Enhancement 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 Commodity Research Enhancement 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 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-63.15 of Title 2, unless there is created a duplication in numbering, reads as follows:

The collection of the state assessment shall be collected in the same manner as the federal assessment for the federally approved commodity.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-63.16 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. A producer who has paid a state assessment may obtain a refund of the amount paid by filing an application for refund with the federally approved commodity 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 state assessment.

B. The board 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 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-63.17 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. The nonprofit commodity organization who originally submitted the petition for a referendum may submit to the voters a proposition to increase the maximum rate of the state assessment. The proposition is approved, and the new maximum rate is in effect if the referendum proposition is adopted as outlined in Section 11 of this act.

B. 1. Consistent with the referendum process as outlined by the federally approved commodity board, producers may petition for a referendum to discontinue the state assessment. In the event that the federally approved commodity board does not have an established process, if ten percent (10%) or more of the producers participating in the program present to the federally approved commodity board a petition calling for a referendum of the qualified voters on the proposition of discontinuing the state assessment, the nonprofit commodity organization who originally submitted the petition for the referendum shall conduct a referendum for that purpose. An election on a proposition of discontinuing the state assessment shall be held no more than once per year.

2. The nonprofit commodity organization 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.

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

4. The adoption of the referendum proposition will be subject to the referendum process outlined by the federally approved commodity board. In the event that the federally approved commodity board does not have an outlined referendum process, the referendum proposition shall be approved if:

a. two-thirds (2/3) or more of those voting in the election voted in favor of the referendum proposition, or

b. more than one-half (1/2) 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.

5. If the proposition is approved, the state assessment is abolished.

C. If the federally approved commodity board's federal assessment is increased, the state-approved assessment shall automatically discontinue upon the date the federally approved commodity board's new federal assessment becomes effective, unless within one (1) month of the announcement of the increase, the nonprofit commodity organization that originally submitted the petition for a referendum may initiate a referendum to be conducted within six (6) months of the announcement to determine if the state-approved assessment shall be continued. The proposition referendum to continue the state assessment will be adopted as outlined in Section 11 of this act.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-63.18 of Title 2, unless there is created a duplication in numbering, reads as follows:

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

SECTION 19. This act shall become effective November 1, 2014.

Passed the Senate the 20th day of May, 2014.

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Presiding Officer of the Senate

Passed the House of Representatives the 21st day of May, 2014.

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Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

_____
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20 _____, at _____ o'clock _____ M.

By: _____