

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 778

To amend the Watermelon Research and Promotion Act to expand operation of the Act to the entire United States, to authorize the revocation of the refund provision of the Act, to modify the referendum procedures of the Act, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

APRIL 7 (legislative day, MARCH 3), 1993

Mr. BOREN introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

NOVEMBER 20 (legislative day, NOVEMBER 2), 1993

Committee discharged

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## A BILL

To amend the Watermelon Research and Promotion Act to expand operation of the Act to the entire United States, to authorize the revocation of the refund provision of the Act, to modify the referendum procedures of the Act, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Watermelon Research and Promotion Improvement Act  
6 of 1993”.

1 (b) TABLE OF CONTENTS.—The table of contents for  
 2 this Act is as follows:

- Sec. 1. Short title and table of contents.
- Sec. 2. Change to majority vote in referendum procedures.
- Sec. 3. Expansion of watermelon plans to entire United States.
- Sec. 4. Clarification of differences between producers and handlers.
- Sec. 5. Clarification of collection of assessments by the Board.
- Sec. 6. Changes to assessment rate not subject to formal rulemaking.
- Sec. 7. Elimination of watermelon assessment refund.
- Sec. 8. Equitable treatment of watermelon plans.
- Sec. 9. Separate consideration of watermelon plan amendments.

3 **SEC. 2. CHANGE TO MAJORITY VOTE IN REFERENDUM PRO-**  
 4 **CEDURES.**

5 Section 1653 of the Watermelon Research and Pro-  
 6 motion Act (7 U.S.C. 4912) is amended—

- 7 (1) by inserting “(a)” after “SEC. 1653.”;
- 8 (2) by striking the third sentence; and
- 9 (3) inserting at the end the following new sub-  
 10 section:

11 “(b) A plan issued under this subtitle shall not take  
 12 effect unless the Secretary determines that the issuance  
 13 of the plan is approved or favored by a majority of the  
 14 producers and handlers (and importers if subject to the  
 15 plan) voting in the referendum.”.

16 **SEC. 3. EXPANSION OF WATERMELON PLANS TO ENTIRE**  
 17 **UNITED STATES.**

18 (a) DEFINITIONS.—Section 1643 of the Watermelon  
 19 Research and Promotion Act (7 U.S.C. 4902) is amend-  
 20 ed—

1 (1) in paragraph (3), by striking “the forty-  
2 eight contiguous States of”; and

3 (2) by adding at the end the following new  
4 paragraph:

5 “(10) The term ‘United States’ means each of  
6 the several States and the District of Columbia.”.

7 (b) ISSUANCE OF PLANS.—The last sentence of sec-  
8 tion 1644 of such Act (7 U.S.C. 4903) is amended by  
9 striking “the forty-eight contiguous States of”.

10 **SEC. 4. CLARIFICATION OF DIFFERENCES BETWEEN PRO-**  
11 **DUCERS AND HANDLERS.**

12 Section 1647(c) of the Watermelon Research and  
13 Promotion Act (7 U.S.C. 4906(c)) is amended—

14 (1) by inserting “(1)” after “(c)”; and

15 (2) by adding at the end the following new  
16 paragraph:

17 “(2) If a producer purchases watermelons from other  
18 producers in a combined total volume that is equal to 25  
19 percent or more of the producer’s own production, the pro-  
20 ducer shall be eligible to serve on the Board only as a  
21 representative of handlers and not as a representative of  
22 producers.”.

1 **SEC. 5. CLARIFICATION OF COLLECTION OF ASSESSMENTS**  
2 **BY THE BOARD.**

3 Section 1647 of the Watermelon Research and Pro-  
4 motion Act (7 U.S.C. 4906) is amended—

5 (1) in subsection (f), by striking “collection of  
6 the assessments by the Board” and inserting “pay-  
7 ment of the assessments to the Board”; and

8 (2) in paragraphs (1) and (3) of subsection (g),  
9 by striking “collected” each place it appears and in-  
10 sserting “received”.

11 **SEC. 6. CHANGES TO ASSESSMENT RATE NOT SUBJECT TO**  
12 **FORMAL RULEMAKING.**

13 Section 1647(f) of the Watermelon Research and  
14 Promotion Act (7 U.S.C. 4906(f)), as amended by section  
15 5(1), is further amended by adding at the end the follow-  
16 ing new sentences: “In fixing or changing the rate of as-  
17 sessment pursuant to the plan, the Secretary shall comply  
18 with the notice and comment procedures established under  
19 section 553 of title 5, United States Code. Sections 556  
20 and 557 of such title shall not apply with respect to fixing  
21 or changing the rate of assessment.”.

22 **SEC. 7. ELIMINATION OF WATERMELON ASSESSMENT RE-**  
23 **FUND.**

24 Section 1647(h) of the Watermelon Research and  
25 Promotion Act (7 U.S.C. 4906(h)) is amended—

1           (1) by inserting “(1) Except as provided in  
2 paragraph (2)” after “(h)”; and

3           (2) by adding at the end the following new  
4 paragraph:

5           “(2) If approved in the referendum required by sec-  
6 tion 1655(b) relating to the elimination of the assessment  
7 refund under paragraph (1), the Secretary shall amend  
8 the plan that is in effect on the day before the date of  
9 the enactment of the Watermelon Research and Promotion  
10 Improvement Act of 1993 to eliminate the refund provi-  
11 sion.”.

12 **SEC. 8. EQUITABLE TREATMENT OF WATERMELON PLANS.**

13           (a) DEFINITIONS.—Section 1643 of the Watermelon  
14 Research and Promotion Act (7 U.S.C. 4902), as amended  
15 by section 3(a), is further amended—

16           (1) in paragraph (3), by striking the semicolon  
17 at the end and inserting the following: “or imported  
18 into the United States.”;

19           (2) by redesignating paragraphs (6) and (7) as  
20 paragraphs (8) and (9), respectively; and

21           (3) by inserting after paragraph (5) the follow-  
22 ing new paragraphs:

23           “(6) The term ‘importer’ means any person  
24 who imports watermelons into the United States.

1           “(7) The term ‘plan’ means an order issued by  
2           the Secretary under this subtitle.”.

3           (b) ISSUANCE OF PLANS.—Section 1644 of such Act  
4 (7 U.S.C. 4903), as amended by section 3(b), is further  
5 amended—

6           (1) in the first sentence, by striking “and han-  
7           dlers” and inserting “, handlers, and importers”;

8           (2) by striking the second sentence; and

9           (3) in the last sentence, by inserting “or im-  
10          ported into the United States” before the period.

11          (c) NOTICE AND HEARINGS.—Section 1645(a) of  
12 such Act (7 U.S.C. 4904(a)) is amended—

13          (1) in the first sentence, by striking “and han-  
14          dlers” and inserting “, handlers, and importers”;  
15          and

16          (2) in the last sentence, by striking “or han-  
17          dlers” and inserting “, handlers, or importers”.

18          (d) MEMBERSHIP OF BOARD.—Section 1647(c) of  
19 such Act (7 U.S.C. 4906(c)), as amended by section 4,  
20 is further amended—

21          (1) in the second sentence of paragraph (1), by  
22          striking “producer and handler members” and in-  
23          serting “other members”; and

24          (2) by adding at the end the following new  
25          paragraph:

1       “(3) If importers are subject to the plan, the Board  
2 shall also include a single representative of importers, who  
3 shall be appointed by the Secretary from nominations sub-  
4 mitted by importers in such manner as may be prescribed  
5 by the Secretary. If the importers that are subject to the  
6 plan fail to select a nominee for appointment to the Board,  
7 the Secretary may appoint any importer as the representa-  
8 tive of importers.”.

9       (e) ASSESSMENTS.—Section 1647(g) of such Act (7  
10 U.S.C. 4906(g)), as amended by section 5(2), is further  
11 amended—

12           (1) in paragraph (4)—

13               (A) by striking “(4) assessments” and in-  
14               serting “(4) Assessments”; and

15               (B) by inserting “in the case of producers  
16               and handlers” after “such assessments”; and

17           (2) by adding at the end the following new  
18 paragraph:

19               “(5) If importers are subject to the plan, an as-  
20               sessment shall also be made on watermelons im-  
21               ported into the United States by the importers. The  
22               rate of assessment for importers (if subject to the  
23               plan) shall be equal to the combined rate for produc-  
24               ers and handlers.”.

1 (f) REFUNDS.—Section 1647(h) of such Act (7  
2 U.S.C. 4906(h)), as amended by section 7, is further  
3 amended—

4 (1) by inserting after “or handler” the first two  
5 places it appears the following: “(or importer if sub-  
6 ject to the plan)”; and

7 (2) by striking “or handler” the last place it  
8 appears and inserting “, handler, or importer”.

9 (g) ASSESSMENT PROCEDURES.—Section 1649 of  
10 such Act (7 U.S.C. 4908) is amended—

11 (1) in subsection (a)—

12 (A) by inserting “(1)” after “(a)”; and

13 (B) by adding at the end the following new  
14 paragraph:

15 “(2) If importers are subject to the plan, each im-  
16 porter required to pay assessments under the plan shall  
17 be responsible for payment of the assessment to the  
18 Board, as the Board may direct. The assessment on im-  
19 ported watermelons shall be equal to the combined rate  
20 for domestic producers and handlers and shall be paid by  
21 the importer to the Board at the time of the entry of the  
22 watermelons into the United States. Each such importer  
23 shall maintain a separate record including the total quan-  
24 tity of watermelons imported into the United States that  
25 are included under the terms of the plan, as well as those



1 that are exempt under the plan, and shall indicate such  
2 other information as may be prescribed by the Board. No  
3 more than one assessment shall be made on any imported  
4 watermelons.”;

5 (2) in subsection (b), by inserting “and import-  
6 ers” after “Handlers”; and

7 (3) in subsection (c)(1), by inserting “or im-  
8 porters” after “handlers”.

9 (h) INVESTIGATIONS.—Section 1652(a) of such Act  
10 (7 U.S.C. 4911(a)) is amended—

11 (1) in the first sentence, by striking “a handler  
12 or any other person” by inserting “a person”;

13 (2) in the fourth sentence, by inserting “(or an  
14 importer if subject to the plan)” after “a handler”;  
15 and

16 (3) in the last sentence, by striking “the han-  
17 dler or other person” and inserting “the person”.

18 (i) REFERENDUM.—Section 1653(a) of such Act, as  
19 amended by section 2, is further amended—

20 (1) in the first sentence—

21 (A) by striking “and handlers” both places  
22 it appears and inserting “, handlers, and im-  
23 porters”; and

24 (B) by striking “or handling” and insert-  
25 ing “, handling, or importing”; and

1 (2) in the fourth sentence—

2 (A) by striking “or handler” and inserting  
3 “, handler, or importer”; and

4 (B) by striking “or handled” and inserting  
5 “, handled, or imported”.

6 (j) TERMINATION OF PLANS.—Section 1654(b) of  
7 such Act (7 U.S.C. 4913(b)) is amended—

8 (1) in the first sentence—

9 (A) by striking “10 per centum or more”  
10 and inserting “at least 10 percent of the com-  
11 bined total”; and

12 (B) by striking “and handlers” both places  
13 it appears and inserting “, handlers, and im-  
14 porters”; and

15 (2) in the second sentence—

16 (A) by striking “or handle” and inserting  
17 “, handle, or import”;

18 (B) by striking “50 per centum” and in-  
19 serting “50 percent of the combined total”.

20 (C) by striking “or handled by the han-  
21 dlers” and inserting “, handled by the handlers,  
22 and imported by the importers”.

23 (k) CONFORMING AND TECHNICAL AMENDMENTS.—  
24 Such Act is further amended—

1 (1) in section 1642(a)(5) (7 U.S.C.  
2 4901(a)(5)), by striking “and handling” and insert-  
3 ing “handling, and importing”;

4 (2) in the first sentence of section 1642(b) (7  
5 U.S.C. 4901(b))—

6 (A) by inserting “, or imported into the  
7 United States,” after “harvested in the United  
8 States”; and

9 (B) by striking “produced in the United  
10 States”;

11 (3) in section 1643 (7 U.S.C. 4902), as amend-  
12 ed by subsection (a) and section 3—

13 (A) by striking “subtitle—” and inserting  
14 “subtitle:”;

15 (B) in paragraphs (1), (2), (3), (4), and  
16 (5), by striking “the term” each place it ap-  
17 pears and inserting “The term”;

18 (C) in paragraphs (1), (2), (4), and (5), by  
19 striking the semicolon at the end and inserting  
20 a period;

21 (D) in paragraph (8), as redesignated by  
22 subsection (a)(2)—

23 (i) by striking “the term” and insert-  
24 ing “The term”; and

1 (ii) by striking “; and” and inserting  
2 a period; and

3 (E) in paragraph (9), as redesignated by  
4 subsection (a)(2)—

5 (i) by striking “the term” and insert-  
6 ing “The term”; and

7 (ii) by striking “1644” and inserting  
8 “1647”; and

9 (4) in section 1647(g) (7 U.S.C. 4906(g)), as  
10 amended by subsection (e) and section 5(2)—

11 (A) by striking “that—” and inserting  
12 “the following:”;

13 (B) in paragraph (1)—

14 (i) by striking “(1) funds” and insert-  
15 ing “(1) Funds”; and

16 (ii) by striking the semicolon at the  
17 end and inserting a period;

18 (C) in paragraph (2)—

19 (i) by striking “(2) no” and inserting  
20 “(2) No”; and

21 (ii) by striking the semicolon at the  
22 end and inserting a period; and

23 (D) in paragraph (3)—

24 (i) by striking “(3) no” and inserting  
25 “(3) No”; and

1 (ii) by striking “; and” and inserting  
2 a period.

3 **SEC. 9. SEPARATE CONSIDERATION OF WATERMELON**  
4 **PLAN AMENDMENTS.**

5 Section 1655 of the Watermelon Research and Pro-  
6 motion Act (7 U.S.C. 4914) is amended—

7 (1) by inserting “(a)” before “The provisions”;  
8 and

9 (2) by adding at the end the following new sub-  
10 sections:

11 “(b) The amendments described in subsection (c)  
12 that are required to be made by the Secretary to a plan  
13 as a result of the amendments made by the Watermelon  
14 Research and Promotion Improvement Act of 1993 shall  
15 be subject to separate line item voting and approval in  
16 a referendum conducted pursuant to section 1653 before  
17 the Secretary alters the plan as in effect on the day before  
18 the date of the enactment of such Act.

19 “(c) The amendments referred to in subsection (b)  
20 are those amendments required under—

21 “(1) section 7 of the Watermelon Research and  
22 Promotion Improvement Act of 1993 relating to the  
23 elimination of the assessment refund; and

24 “(2) section 8 of such Act relating to subjecting  
25 importers to the terms and conditions of the plan.

1       “(d) When conducting the referendum relating to  
2       subjecting importers to the terms and conditions of a plan,  
3       the Secretary shall include as eligible voters in the referen-  
4       dum producers, handlers, and importers who would be  
5       subject to the plan if the amendments are approved.”.

○