

104TH CONGRESS
1ST SESSION

S. 1449

To make agricultural promotion boards and councils more responsive to producers whose mandatory assessments support the activities of such boards and councils, to improve the representation and participation of such producers on such boards and councils, to ensure the independence of such boards and councils, to ensure the appropriate use of promotion funds, to prevent legislatively authorized promotion and research boards from using mandatory assessments to directly or indirectly influence legislation or governmental action or policy, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 5, 1995

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

A BILL

To make agricultural promotion boards and councils more responsive to producers whose mandatory assessments support the activities of such boards and councils, to improve the representation and participation of such producers on such boards and councils, to ensure the independence of such boards and councils, to ensure the appropriate use of promotion funds, to prevent legislatively authorized promotion and research boards from using mandatory assessments to directly or indirectly influence legislation or governmental action or policy, 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.**

4 This Act may be cited as the “Agricultural Promotion
5 Accountability Act of 1995”.

6 **SEC. 2. PURPOSE.**

7 The purpose of this Act is to make agricultural pro-
8 motion boards and councils more responsive to producers
9 whose mandatory assessments support the activities of
10 such boards and councils, to improve the representation
11 and participation of such producers on such boards and
12 councils, to ensure the independence of such boards and
13 councils, to ensure the appropriate use of promotion
14 funds, and to prevent legislatively authorized agricultural
15 promotion and research boards from using mandatory as-
16 sessments to directly or indirectly influence legislation or
17 governmental action or policy.

18 **SEC. 3. DEFINITIONS.**

19 In this Act:

20 (1) INFLUENCING LEGISLATION OR GOVERN-
21 MENTAL ACTION OR POLICY.—The term “influencing
22 legislation or governmental action or policy” in-
23 cludes—

24 (A) establishing, administering, contribut-
25 ing to, or paying the expenses of a political

1 party campaign, political action committee, or
2 other organization established for the purpose
3 of influencing the outcome of an election;

4 (B) attempting to influence—

5 (i) the outcome of any Federal, State
6 or local election, referendum, initiative, or
7 similar procedure through a cash contribu-
8 tion, in-kind contribution, endorsement,
9 publicity or public relations activity or
10 similar activity;

11 (ii) the introduction, modification, or
12 enactment of any Federal or State legisla-
13 tion or signature or veto of any enrolled
14 Federal or State legislation, including
15 through—

16 (I) communication with any
17 member or employee of a legislative
18 body or agency or with any govern-
19 mental official or employee who may
20 participate in the formulation of the
21 legislation, including engaging State
22 or local officials in similar activity
23 (not including a communication to an
24 appropriate government official in re-
25 sponse to a written request by the of-

1 ficial for factual, scientific, or tech-
2 nical information relating to the con-
3 duct, implementation, or results of
4 promotion, research, consumer infor-
5 mation and education, industry infor-
6 mation, or producer information ac-
7 tivities under a promotion program);

8 (II) planning, preparing, funding,
9 or distributing any publicity or propa-
10 ganda to affect the opinion of the gen-
11 eral public or a segment of the public
12 in connection with a pending legisla-
13 tive matter; or

14 (III) urging members of the gen-
15 eral public or any segment of the gen-
16 eral public to contribute to, or partici-
17 pate in, any mass demonstration,
18 march, rally, fund-raising drive, lobby-
19 ing campaign, letter-writing cam-
20 paign, or telephone campaign in con-
21 nection with a pending legislative mat-
22 ter;

23 (C) carrying out a legislative liaison activ-
24 ity, including attendance at a legislative session
25 or committee hearing to gather information re-

1 garding legislation or to analyze the effect of
2 legislation, if the activity is carried on in sup-
3 port of, or in knowing preparation for, an effort
4 to influence legislation or government action or
5 policy;

6 (D) carrying out an opinion survey of the
7 general public or a segment of the public, gen-
8 eral research, or information gathering, if car-
9 ried out in support of, or in knowing prepara-
10 tion for, an effort to influence legislation or
11 government action or policy; or

12 (E) attempting to influence any agency ac-
13 tion or agency proceeding, as the terms are de-
14 fined in section 551 of title 5, United States
15 Code, through—

16 (i) communication with any govern-
17 ment official or employee who may partici-
18 pate in the action or proceeding (not in-
19 cluding a communication to an appropriate
20 government official in response to a writ-
21 ten request by the official for factual, sci-
22 entific, or technical information relating to
23 the conduct, implementation, or results of
24 promotion, research, consumer information
25 or education, or industry information of

1 producer information activities under a
2 promotion program);

3 (ii) planning, preparing, funding, or
4 distributing any publicity or propaganda to
5 affect the opinions of the general public or
6 any segment of the general public in con-
7 nection with the action or proceeding; or

8 (iii) urging members of the general
9 public or any segment of the general public
10 to contribute to, or participate in, any
11 mass demonstration, march, rally, fund-
12 raising drive, lobbying campaign, letter-
13 writing campaign, or telephone campaign
14 in connection with the action or proceed-
15 ing.

16 (2) PROMOTION PROGRAM.—The term “pro-
17 motion program” means—

18 (A) the cotton research and promotion pro-
19 gram established under the Cotton Research
20 and Promotion Act (7 U.S.C. 2101 et seq.);

21 (B) the potato research, development, ad-
22 vertising, and promotion program established
23 under the Potato Research and Promotion Act
24 (7 U.S.C. 2611 et seq.);

1 (C) the egg research, consumer and pro-
2 ducer education, and promotion program estab-
3 lished under the Egg Research and Consumer
4 Information Act (7 U.S.C. 2701 et seq.);

5 (D) the beef promotion and research pro-
6 gram established under the Beef Research and
7 Information Act (7 U.S.C. 2901 et seq.);

8 (E) the wheat research and nutrition edu-
9 cation program established under the Wheat
10 and Wheat Foods Research and Nutrition Edu-
11 cation Act (7 U.S.C. 3401 et seq.);

12 (F) the dairy promotion program estab-
13 lished under the Dairy Production Stabilization
14 Act of 1983 (7 U.S.C. 4501 et seq.);

15 (G) the honey research, promotion, and
16 consumer education program established under
17 the Honey Research, Promotion, and Consumer
18 Information Act (7 U.S.C. 4601 et seq.);

19 (H) the pork promotion, research, and
20 consumer information program established
21 under the Pork Promotion, Research, and
22 Consumer Information Act (7 U.S.C. 4801 et
23 seq.);

24 (I) the watermelon research, development,
25 advertising, and promotion program established

1 under the Watermelon Research and Promotion
2 Act (7 U.S.C. 4901 et seq.);

3 (J) the pecan promotion, research, indus-
4 try information, and consumer information pro-
5 gram established under the Pecan Promotion
6 and Research Act of 1990 (7 U.S.C. 6001 et
7 seq.);

8 (K) the mushroom promotion, research,
9 and consumer and industry information pro-
10 gram established under the Mushroom Pro-
11 motion, Research, and Consumer Information
12 Act of 1990 (7 U.S.C. 6101 et seq.);

13 (L) the lime research, promotion, and
14 consumer information program established
15 under the Lime Research, Promotion, and
16 Consumer Information Act of 1990 (7 U.S.C.
17 6201 et seq.);

18 (M) the soybean promotion, research,
19 consumer information, and industry information
20 program established under the Soybean Pro-
21 motion, Research, and Consumer Information
22 Act (7 U.S.C. 6301 et seq.);

23 (N) the fluid milk advertising and pro-
24 motion program established under the Fluid

1 Milk Promotion Act of 1990 (7 U.S.C. 6401 et
2 seq.);

3 (O) the flowers and greens promotion,
4 consumer information, and related research
5 program established under the Fresh Cut Flow-
6 ers and Fresh Cut Greens Promotion and Infor-
7 mation Act of 1993 (7 U.S.C. 6801 et seq.);

8 (P) the sheep promotion, research,
9 consumer information, education, and industry
10 information program established under the
11 Sheep Promotion, Research, and Information
12 Act of 1994 (7 U.S.C. 7101 et seq.); and

13 (Q) any other coordinated program of pro-
14 motion, research, industry information, and
15 consumer information that is funded by manda-
16 tory assessments on producers and designed to
17 maintain and expand markets and uses for an
18 agricultural commodity, as determined by the
19 Secretary.

20 (3) SECRETARY.—The term “Secretary” means
21 the Secretary of Agriculture.

22 **SEC. 4. INFLUENCING LEGISLATION OR GOVERNMENTAL**
23 **ACTION OR POLICY.**

24 (a) IN GENERAL.—A board or council established by
25 a promotion program may not use any funds collected by

1 the board or council for the purpose of directly or indi-
2 rectly influencing legislation or governmental action or
3 policy, except for the development and recommendation of
4 amendments to the promotion program to the Secretary.

5 (b) CONFORMING AMENDMENTS.—

6 (1) COTTON.—Section 7(h) of the Cotton Re-
7 search and Promotion Act (7 U.S.C. 2106(h)) is
8 amended by striking “influencing governmental pol-
9 icy or action” and inserting “directly or indirectly
10 influencing legislation or governmental action or pol-
11 icy (as defined in section 3(1) of the Agricultural
12 Promotion Accountability Act of 1995)”.

13 (2) POTATOES.—Section 308(f)(3) of the Po-
14 tato Research and Promotion Act (7 U.S.C.
15 2617(f)(3)) is amended by striking “influencing gov-
16 ernmental policy or action” and inserting “directly
17 or indirectly influencing legislation or governmental
18 action or policy (as defined in section 3(1) of the
19 Agricultural Promotion Accountability Act of
20 1995)”.

21 (3) EGGS.—Section 8(h) of the Egg Research
22 and Consumer Information Act (7 U.S.C. 2707) is
23 amended by striking “influencing governmental pol-
24 icy or action” and inserting “directly or indirectly
25 influencing legislation or governmental action or pol-

1 iciency (as defined in section 3(1) of the Agricultural
2 Promotion Accountability Act of 1995)”.

3 (4) BEEF.—Section 5(10) of the Beef Research
4 and Information Act (7 U.S.C. 2904(10)) is amend-
5 ed—

6 (A) by striking “influencing governmental
7 action or policy” and inserting “directly or indi-
8 rectly influencing legislation or governmental
9 action or policy (as defined in section 3(1) of
10 the Agricultural Promotion Accountability Act
11 of 1995)”;

12 (B) by inserting “to the Secretary” before
13 the period at the end.

14 (5) WHEAT.—Section 1706(i) of the Wheat and
15 Wheat Foods Research and Nutrition Education Act
16 (7 U.S.C. 3405(i)) is amended by striking “influen-
17 cing governmental policy or action” and inserting “di-
18 rectly or indirectly influencing legislation or govern-
19 mental action or policy (as defined in section 3(1) of
20 the Agricultural Promotion Accountability Act of
21 1995)”.

22 (6) DAIRY.—Section 113(j) of the Dairy Pro-
23 duction Stabilization Act of 1983 (7 U.S.C. 4504(j))
24 is amended by striking “influencing governmental
25 policy or action” and inserting “directly or indirectly

1 influencing legislation or governmental action or pol-
2 icy (as defined in section 3(1) of the Agricultural
3 Promotion Accountability Act of 1995),”.

4 (7) HONEY.—Section 7(h) of the Honey Re-
5 search, Promotion, and Consumer Information Act
6 (7 U.S.C. 4606(h)) is amended by striking “influ-
7 encing governmental policy or action” and inserting
8 “directly or indirectly influencing legislation or gov-
9 ernmental action or policy (as defined in section 3(1)
10 of the Agricultural Promotion Accountability Act of
11 1995)”.

12 (8) PORK.—Section 1620(e) of the Pork Pro-
13 motion, Research, and Consumer Information Act (7
14 U.S.C. 4809(e)) is amended by striking “influencing
15 legislation” and all that follows through the period
16 at the end and inserting the following: “directly or
17 indirectly influencing legislation or governmental ac-
18 tion or policy (as defined in section 3(1) of the Agri-
19 cultural Promotion Accountability Act of 1995), ex-
20 cept to recommend amendments to the order to the
21 Secretary.”.

22 (9) WATERMELONS.—Section 1647(g)(3) of the
23 Watermelon Research and Promotion Act (7 U.S.C.
24 4906(g)(3)) is amended by striking “influencing gov-
25 ernmental policy or action” and inserting “directly

1 or indirectly influencing legislation or governmental
2 action or policy (as defined in section 3(1) of the
3 Agricultural Promotion Accountability Act of
4 1995)”.
5

6 (10) PECANS.—Section 1910(g)(1) of the
7 Pecan Promotion and Research Act of 1990 (7
8 U.S.C. 6005(g)(1)) is amended—

9 (A) in the matter preceding paragraph
10 (1)—

11 (i) by striking “to,” and inserting “for
12 the purpose of,”; and

13 (ii) by striking “to—” and inserting
14 “for the purpose of—”;

15 (B) in paragraph (1), by striking “influ-
16 ence legislation or governmental action” and in-
17 serting “directly or indirectly influencing legis-
18 lation or governmental action or policy (as de-
19 fined in section 3(1) of the Agricultural Pro-
20 motion Accountability Act of 1995)”;

21 (C) in paragraph (2), by striking “engage”
22 and inserting “engaging”; and

23 (D) in paragraph (3), by striking “engage”
24 and inserting “engaging”.

25 (11) MUSHROOMS.—Section 1925(h) of the
Mushroom Promotion, Research, and Consumer In-

1 formation Act of 1990 (7 U.S.C. 6104(h)) is amend-
2 ed by striking “influencing legislation or govern-
3 mental action or policy” and inserting “directly or
4 indirectly influencing legislation or governmental ac-
5 tion or policy (as defined in section 3(1) of the Agri-
6 cultural Promotion Accountability Act of 1995)”.

7 (12) LIMES.—Section 1955(g) of the Lime Re-
8 search, Promotion, and Consumer Information Act
9 of 1990 (7 U.S.C. 6204(g)) is amended by striking
10 “influencing legislation or governmental policy or ac-
11 tion” and inserting “directly or indirectly influencing
12 legislation or governmental action or policy (as de-
13 fined in section 3(1) of the Agricultural Promotion
14 Accountability Act of 1995)”.

15 (13) SOYBEANS.—Section 1969(p) of the Soy-
16 bean Promotion, Research, and Consumer Informa-
17 tion Act (7 U.S.C. 6304(p)) is amended—

18 (A) in paragraph (1), by striking “influ-
19 encing legislation or governmental action or pol-
20 icy” and inserting “directly or indirectly influ-
21 encing legislation or governmental action or pol-
22 icy (as defined in section 3(1) of the Agricul-
23 tural Promotion Accountability Act of 1995)”;
24 and

25 (B) in paragraph (2)—

1 (i) in subparagraph (A), by inserting
2 “to the Secretary” before the semicolon;
3 and

4 (ii) in subparagraph (B), by inserting
5 “, in response to a request made by the of-
6 ficials,” after “officials”.

7 (14) MILK.—Section 1999H(j)(1) of the Fluid
8 Milk Promotion Act of 1990 (7 U.S.C. 6407(j)(1))
9 is amended by striking “influencing legislation or
10 governmental action or policy” and inserting “di-
11 rectly or indirectly influencing legislation or govern-
12 mental action or policy (as defined in section 3(1) of
13 the Agricultural Promotion Accountability Act of
14 1995)”.

15 (15) FLOWERS AND GREENS.—Section 5(i) of
16 the Fresh Cut Flowers and Fresh Cut Greens Pro-
17 motion and Information Act of 1993 (7 U.S.C.
18 6804(i)) is amended by striking “influencing legisla-
19 tion or government action or policy” and inserting
20 “directly or indirectly influencing legislation or gov-
21 ernmental action or policy (as defined in section 3(1)
22 of the Agricultural Promotion Accountability Act of
23 1995)”.

24 (16) SHEEP.—Section 5(l)(1) of the Sheep Pro-
25 motion, Research, and Information Act of 1994 (7

1 U.S.C. 7104(l)(1)) is amended by striking “influen-
2 cing legislation or government action or policy” and
3 inserting “directly or indirectly influencing legisla-
4 tion or governmental action or policy (as defined in
5 section 3(1) of the Agricultural Promotion Account-
6 ability Act of 1995)”.

7 **SEC. 5. PROMOTING THE IMAGE OF AN INDUSTRY PROHIB-**
8 **ITED.**

9 (a) IN GENERAL.—A board or council established by
10 a promotion program may not use any funds collected by
11 the board or council for the purpose of enhancing the
12 image of an industry, except that the board or council may
13 promote the image of a product with the express intent
14 of stimulating demand for and sales of an agricultural
15 product in the marketplace.

16 (b) CONFORMING AMENDMENTS.—

17 (1) BEEF.—Section 3(9) of the Beef Research
18 and Information Act (7 U.S.C. 2902(9)) is amended
19 by striking “, increased efficiency” and all that fol-
20 lows through “industry” and inserting “and in-
21 creased efficiency”.

22 (2) PECANS.—Section 1907(12) of the Pecan
23 Promotion and Research Act of 1990 (7 U.S.C.
24 6002(12)) is amended by striking “, increased effi-

1 ciency” and all that follows through “industry” and
2 inserting “and increased efficiency”.

3 (3) MUSHROOMS.—Section 1923(7) of the
4 Mushroom Promotion, Research, and Consumer In-
5 formation Act of 1990 (7 U.S.C. 6103(7)) is amend-
6 ed by striking “, increased efficiency” and all that
7 follows through “industry” and inserting “and in-
8 creased efficiency”.

9 (4) SOYBEANS.—Section 1967(7) of the Soy-
10 bean Promotion, Research, and Consumer Informa-
11 tion Act (7 U.S.C. 6302(7)) is amended by striking
12 “, and activities” and all that follows through “in-
13 dustry”.

14 **SEC. 6. LIMITATIONS ON CONTRACTING.**

15 (a) PERMITTED CONTRACTS OR AGREEMENTS.—
16 Notwithstanding any other provision of law, a board or
17 council established by a promotion program shall not be
18 limited to contracting with, or entering into an agreement
19 with, an established national nonprofit industry-governed
20 organization.

21 (b) COMPETITIVE BIDDING.—It is the policy of Con-
22 gress that boards and councils should, to the extent prac-
23 ticable, use competitive bidding in the awarding of con-
24 tracts and grants for activities authorized under a pro-
25 motion program.

1 (c) INDEPENDENCE OF BOARDS AND COUNCILS.—

2 (1) APPLICATIONS AND RECOMMENDATIONS
3 NOT BINDING.—Notwithstanding any other provision
4 of law, a board or council established by a promotion
5 program shall not be bound by a proposed applica-
6 tion for a board or council contract or a rec-
7 ommendation or advice of a potential contractor or
8 a national nonprofit industry-governed organization
9 on the use of board or council receipts.

10 (2) INTERLOCKING BOARDS OR MEMBERSHIP.—
11 Notwithstanding any other provision of law, no per-
12 son shall be eligible to be a member of any board or
13 council established by a promotion program (includ-
14 ing operating and nominating committees) if the
15 person serves in any decision making capacity, such
16 as that of a member of the board of directors, execu-
17 tive committee, or other committee, for an entity
18 that enters into a contract or other agreement with
19 the board or council.

20 (3) REQUIREMENTS FOR CONTRACTING.—A
21 contractor or grantee of a board or council may not
22 use funds collected through mandatory assessments
23 under a promotion program to fund any staff (in-
24 cluding expenses or other activities of the staff) who,

1 in part, engage in 1 or more activities to influence
2 legislation or governmental action or policy.

3 (d) PRODUCER APPROVAL OF RELATIONSHIPS WITH
4 BOARDS OR COUNCILS.—

5 (1) IN GENERAL.—Except as provided in para-
6 graph (2) and notwithstanding any other provision
7 of law, the entering into of a permanent cooperative
8 arrangement or the establishment of a joint commit-
9 tee (including an arrangement that is advisory in
10 nature) by a board or council established by a pro-
11 motion program with a national nonprofit industry-
12 governed organization shall require the prior ap-
13 proval of at least $\frac{2}{3}$ of the eligible producers under
14 the promotion program.

15 (2) EXCEPTION.—Paragraph (1) shall not
16 apply to a cooperative arrangement or joint commit-
17 tee—

18 (A) that was established prior to January
19 1, 1995; or

20 (B) that includes representatives or par-
21 ticipation from all producer-, processor-, or
22 handler-governed national nonprofit organiza-
23 tions (including general farm organizations)
24 that represent any but an insignificant number
25 of producers, processors, or handlers paying as-

1 assessments under the promotion program to the
2 board or council, as determined by the Sec-
3 retary.

4 (3) PERMANENT COOPERATIVE ARRANGE-
5 MENT.—In this subsection, the term “permanent co-
6 operative arrangement” means a formal or informal,
7 written or unwritten agreement or understanding es-
8 tablishing a relationship, a liaison, a sole source con-
9 tract, or an operational mechanism under which a
10 board or council shares staff, facilities, or other re-
11 sources or carries out coordinated activities with any
12 entity on a more or less permanent and exclusive
13 basis.

14 (e) FUNGIBILITY OF BOARD OR COUNCIL FUNDS.—

15 (1) IN GENERAL.—The Inspector General of
16 the Department of Agriculture shall conduct an an-
17 nual review of contractual arrangements between
18 each board or council established by a promotion
19 program and any entity or association that engages
20 in activities to influence legislation or governmental
21 action or policy and receives a significant amount of
22 funding from the board or council as determined by
23 the Secretary.

24 (2) SCOPE OF REVIEW.—A review under para-
25 graph (1) shall examine whether any funds collected

1 by the board or council are used to directly or indi-
2 rectly fund or subsidize an entity or association that
3 engages in influencing legislation or governmental
4 action or policy.

5 (3) REPORT.—The Secretary shall submit a re-
6 port on the findings of any review under this sub-
7 section and make recommendations for any actions
8 that should be taken as a result of the findings to
9 the Committee on Agriculture of the House of Rep-
10 resentatives and the Committee on Agriculture, Nu-
11 trition, and Forestry of the Senate.

12 **SEC. 7. PERIODIC REFERENDA.**

13 (a) IN GENERAL.—Notwithstanding any other provi-
14 sion of law, not less than 4 nor more than 6 years after
15 the date of enactment of this Act or the date on which
16 the Secretary determines the results of the most recent
17 referendum for a promotion program, whichever is earlier,
18 and not less than once every 5 years thereafter, the Sec-
19 retary shall conduct a referendum to determine whether
20 to approve or terminate the order under the promotion
21 program and whether refunds should be made under the
22 order.

23 (b) PROCEDURE.—The referendum under subsection
24 (a) shall be conducted using the same eligibility and other
25 procedures as the referendum used to approve the original

1 order under the promotion program, except that, notwith-
2 standing any other provision of law, no greater than a sim-
3 ple majority of eligible producers shall be required to ap-
4 prove the making of refunds to producers.

5 (c) TERMINATION.—

6 (1) IN GENERAL.—If the percentage of persons
7 voting to approve the order does not equal or exceed
8 the percentage of persons necessary to approve the
9 continuation of the original order under the pro-
10 motion program, the Secretary shall terminate the
11 order.

12 (2) TIME OF TERMINATION.—The Secretary
13 shall terminate the order at the end of the market-
14 ing year during which the referendum is conducted.

15 (d) REFUNDS.—If the making of refunds is approved
16 in a referendum under subsection (a), the Secretary shall
17 establish a procedure for making the refunds not later
18 than 180 days after the date of the referendum.

19 (e) COOPERATIVE ASSOCIATION.—Notwithstanding
20 subsection (b), a cooperative association may not vote on
21 behalf of the members of the association in a referendum
22 conducted under this section.

23 (f) INACTIVE PROMOTION PROGRAMS.—The Sec-
24 retary shall not conduct a referendum of a promotion pro-

- 1 gram under this section if the Secretary determines that
- 2 the promotion program is not active.

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