

SUBJECT: Boll weevil eradication revisions

COMMITTEE: Agriculture and Livestock — favorable, without amendment

VOTE: 6 ayes — Swinford, McReynolds, B. Brown, Christian, Green, Hupp  
0 nays  
3 absent — Crownover, Hardcastle, C. Jones

SENATE VOTE: On final passage, April 6 — 30-0

WITNESSES: For — None  
Against — None  
On — Ed Small, Texas Boll Weevil Eradication Foundation

BACKGROUND: In 1993, the Legislature established the Texas Boll Weevil Eradication Foundation (TBWEF) to oversee the eradication of the boll weevil in Texas. In 1997, enactment of SB 1814 by Duncan resolved constitutional issues concerning the foundation and gave the Texas Department of Agriculture (TDA) oversight authority.

Not all cotton-growing regions of Texas participate in the foundation's program. Currently, the Rolling Plains Central, Southern Rolling Plains, and South Texas/Winter Garden regions participate. Several other regions have voted to join the foundation program contingent upon state cost sharing or other financing.

Cotton farmers in participating regions have voted to assess themselves a certain dollar amount per acre to achieve eradication. This assessment is paid to the foundation over approximately four years and goes toward monitoring, trapping, and controlling the boll weevil. Eradication costs are highest the first and second years when large amounts of pesticides are used. Because farmers generally cannot pay variable assessments, the foundation obtains

region-specific loans from banks to cover the high initial costs. All financial arrangements made by the foundation are approved by the farmers themselves.

Current law allows TDA to attach a lien on the cotton of farmers who fail to pay their assessments. The buyer of cotton with an assessment lien takes the cotton free of the lien if the buyer pays for the cotton by check made out jointly to the seller and TDA or if the buyer has not received written or actual notice of the assessment lien. To enforce the lien, TDA must prove that the buyer received notice of the lien. Any buyer of cotton other than the person buying it from the grower takes the cotton free of the assessment lien.

**DIGEST:**

**Payment of assessment liens.** SB 631 would require TBWEF to develop a compliance certificate program to manage payment and collection of assessments levied on cotton farmers. Subject to TDA rules, TBWEF could issue a compliance certificate for cotton for which an assessment had been paid. The commissioner could adopt rules for this program that could include provisions:

- ! establishing the obligations of growers, ginnerers, and buyers of cotton produced in active eradication zones to ensure that assessments were paid on time;
- ! allowing incentives in the form of discounted assessments for growers who paid their assessments on time; and
- ! establishing penalties and interest for late assessment payments.

The bill would provide that an assessment lien in favor of TBWEF would attach and could be perfected 60 days after the foundation mailed notice of the assessment. The buyer of cotton with a lien on it would be free of the lien if, when buying the cotton, the buyer received a compliance certificate issued by TBWEF certifying that the assessment had been paid.

TBWEF could use assessments or liens as collateral for a loan to the foundation only if the loan proceeds were designated for use in the eradication zone from which the assessments or liens originated. SB 631 would delete the current provision under which, in an action to enforce a lien, TDA bears the burden of proving that the cotton buyer received notice of the assessment lien.

**Financial inspection.** SB 631 would authorize the agriculture commissioner to inspect TBWEF's books and other financial records at any time.

**Applicator liability.** SB 631 would remove the commissioner's authority to require TBWEF to name a pesticide applicator as an additional named insured in any insurance policy. The bill would specify that the pesticide applicator would not be jointly and severally liable for any act or omission of the foundation regardless of whether the foundation maintained liability coverage. It would delete the September 1, 1999, expiration date of the section dealing with applicator liability.

**Contracting.** SB 631 would authorize TBWEF to use best-value purchasing methods to buy goods and services. The bill would specify that the most important considerations would be the purchase price and whether the goods or services met specifications, but that TBWEF could consider other relevant factors, including quality and reliability, delivery terms, indicators of vendor performance, and the cost of employee training associated with a purchase.

**Venue for legal action.** The bill would specify Travis County as venue for any legal action arising from the boll weevil eradication program in which TBWEF was a party. This specification would not change the liability of the foundation from what already is specified.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house.

SUPPORTERS  
SAY:

SB 631 would clean up and clarify sections of the statute pertaining to the boll weevil eradication program.

The bill would ensure that TBWEF would receive past-due assessment payments from farmers who were behind on their payments and had a lien attached to their cotton. A farmer with no lien attached would receive a certificate of compliance. Farmers without a certificate of compliance still could sell their cotton and buyers would be free of the lien if they wrote checks to be paid jointly to the farmer and TDA. All buyers in active eradication zones would know that they needed to see a certificate of compliance.

OPPONENTS  
SAY:

SB 631 would remove protection of the cotton buyer when the farmer had an assessment lien. In current law, the burden is on TDA to prove that the buyer had received written or actual notice of the assessment lien. Under SB 631, the buyer would not receive notice of the assessment lien, and the bill would not specify that the buyer must be notified. A buyer unknowingly could buy cotton with a lien attached, and that buyer would be obligated to pay the assessment. Also, if the case went to court, the buyer would have the burden of proving that notice of the lien assessment did not occur, which would be virtually impossible to prove.

Other changes in SB 631 might allow a lien attachment to be passed down the line to each buyer. The current statute specifies that a buyer of cotton other than the person buying it from the grower is free from the assessment lien.

NOTES:

The Article 11 wish list in the House-passed version of HB 1 by Junell, the general appropriations bill for fiscal 2000-01, would appropriate \$25 million each fiscal year to TDA for integrated pest management. SB 472 by Ratliff, the emergency appropriations bill for fiscal 1998-99 enacted by the 76th Legislature effective March 18, allocated \$25 million from general revenue to TDA to pay drought costs and expenses related to the eradication of cotton pests.