

BILL ANALYSIS

Senate Research Center

S.B. 1814
By: Duncan
Natural Resources
5-14-97
Committee Report (Amended)

DIGEST

The 73rd Legislature created the Official Cotton Growers' Boll Weevil Eradication program. The constitutionality of that program was challenged on several grounds by growers from the Rio Grande Valley and High Plains zones. The court found that the statute was unconstitutional on the grounds that the delegation of public authority to a private entity was inappropriate. C.S.S.B. 1814 answers the court's eight-part test regarding the appropriateness of such delegations primarily by prescribing a heightened role for the Texas Department of Agriculture in the operation of the program. This bill also address problems with the operation of the program. Substantive opportunities for grower input are provided through interim advisory groups, which would report directly to the commission of agriculture and consists of at least one grower from each county in an eradication zone.

The program is also being updated to reflect other concerns. As a result of climatic conditions last winter and the the effect of the court ruling on the implementation of the program, the Texas Agricultural Extension Service is predicting 1.5 to 3 times more boll weevils to emerge this season than last season. Boll weevils damage cotton crops and, as such, pose a significant threat to the welfare of a number of regions in Texas which depend largely on cotton. In an effort to improve the existing official cotton growers' boll weevil eradication program, this bill would include the pink bollworm along with the boll weevil; give additional authority to the commissioner of agriculture in managing eradication programs; create new and expanded statutory zones for eradication; change the basis of assessment of penalties on growers who fail to pay certain assessments; and amend provisions regarding the composition of the board of directors of the official cotton growers' boll weevil eradication foundation.

PURPOSE

As proposed, C.S.S.B. 1814 amends the current provisions regarding boll weevil eradication programs to include pink bollworm eradication along with boll weevil eradication, gives additional authority to the commissioner of agriculture in managing eradication programs, creates new and expanded statutory zones for eradication, changes the basis of assessment of penalties on growers who fail to pay certain assessments; and amends provisions regarding the composition of the board of directors of the official cotton growers' boll weevil eradication foundation.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the commissioner of agriculture in SECTION 4 (Section 74.1021, Agriculture Code), SECTION 5 (Section 74.1042(a), Health and Safety Code), SECTION 9 (Section 74.108(b), Health and Safety Code), SECTION 14 (Section 74.114(c), Health and Safety Code), SECTION 17 (Section 74.117, Agriculture Code), and SECTION 25(c) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 74.101, Agriculture Code, to provide that it is hereby found and declared that the insects *Anthonomus grandis* Boheman, known as the boll weevil, and *Pectinophora gossypiella*, known as the pink bollworm, are public nuisances and a menace to the cotton industry and their eradication is a public necessity; because of the difference in soil conditions, growing seasons, farming techniques, and climate conditions among several areas in the state where cotton is grown, the eradication and suppression of the nuisance can best best accomplished by dividing the

cotton-growing areas into separate zones so that integrated pest management programs may be developed for each zone; there is a need for a private entity outside the Department of Agriculture (department) whose members are actual cotton growers who would be represented on the board of the entity by directors elected by them to act as the agent of the department to manage eradication and suppression programs and to furnish expertise in the field of insect control and eradication, because such an entity would enhance the interest and participation of cotton growers in the program; and because of the progress made in eradication, investments made by cotton growers in certain areas, the potential injustice to certain cotton growers who have made such investments, and the stage of development of the cotton crops in the statutory eradication zones, an urgent public necessity exists to validate and ratify the assessments, agreements, and obligations, of the Texas Boll Weevil Eradication Foundation, Inc. made or incurred by the foundation and related to certain statutory zones. Deletes existing Subdivisions (a)(1) and (a)(2). Sets forth the intent of the legislature. Deletes existing Subsection (c). Makes conforming changes.

SECTION 2. Amends Chapter 74D, Agriculture Code, by adding Section 74.1011, as follows:

Sec. 74.1011. DESIGNATION OF OF ENTITY TO CARRY OUT BOLL WEEVIL ERADICATION. Requires the Texas Boll Weevil Eradication Foundation, Inc., (foundation) a Texas nonprofit corporation chartered by the secretary of state on September 14, 1993, to be recognized by the department as the entity to plan, carry out, and operate eradication and diapause programs to eliminate the boll weevil and the pink bollworm from cotton in the state under this supervision of the department as provided by this subchapter. Sets forth provisions regarding termination of the foundation's designation as the entity recognized to carry out boll weevil eradication and the designation of a successor agent to the foundation.

SECTION 3. Amends Section 74.102, Agriculture Code, to redefine "board," "boll weevil," "cotton grower," "eradication," "eradication zone," and "foundation." Defines "pink bollworm." Deletes existing Subdivisions (9) and (14) regarding the "High Plains Boll Weevil Suppression Program Area" and "St. Lawrence Cotton Growers Boll Weevil Control Zone," respectively. Deletes Subdivision (15) regarding the pink bollworm eradication zone. Makes conforming changes.

SECTION 4. Amends Chapter 74D, Agriculture Code, by adding Section 74.1021, as follows:

Sec. 74.1021. STATUTORY ZONES. Sets forth provisions regarding the area and counties composing the Northern High Plains Eradication Zone, the Rolling Plains Central Eradication Zone, the St. Lawrence Eradication Zone, the South Texas Winter Garden Eradication Zone, the Southern High Plains-Caprock Eradication Zone, and the Southern Rolling Plains Eradication Zone.

SECTION 5. Amends Chapter 74D, by adding Sections 74.1041 and 74.1042, as follows:

Sec. 74.1041. INTERIM ADVISORY GROUPS. Authorizes the commissioner to designate an interim advisory group for each geographic region of the state that is to be considered by the commissioner for inclusion in an eradication zone. Sets forth provisions regarding the gathering of advice, input, and guidance from cotton growers. Sets forth provisions regarding each interim advisory group.

Sec. 74.1042. CREATION OF NONSTATUTORY ERADICATION ZONES. Authorizes the commissioner, by rule, to designate an area of the state as a proposed eradication zone under certain conditions. Authorizes the commissioner to hold a public hearing and sets forth provisions regarding the holding of such a hearing. Requires the commissioner, after adoption of a rule under Subsection (a), to conduct a referendum under Section 74.105.

SECTION 6. Amends Sections 74.105(a), (d), (e), and (f), Agriculture Code, to require the commissioner, rather than an organization certified under Section 74.104 of this code or the foundation, to conduct a certain referendum. Provides that if a referendum to establish an eradication zone fails, the concurrent election of a board member from the proposed eradication zone under Section 74.106 of this code has no effect. Requires the commissioner to appoint a representative to the board from the area. Authorizes the organization certified under Section 74.104 of this code or

the foundation, as appropriate, to request the commissioner to call additional referenda in a proposed eradication zone in which a referendum has failed. Requires the eligible voters, after the passage of any referendum, to be allowed by subsequent referenda to vote on whether to continue their assessments. Makes a nonsubstantive change.

SECTION 7. Amends Section 74.106, Agriculture Code, by amending Subsections (a), (c), and (d), and adding Subsection (h), as follows:

(a) Sets forth provisions regarding the representation of each eradication zone on the board of directors of the official cotton growers' boll weevil eradication foundation (board).

(c) Sets forth the requirements for eligibility for a candidate and member of the board.

(d) Sets forth an additional requirement for a cotton grower to serve on the board.

(h) Requires each board member to be sworn into office by a representative of the commissioner by taking the oath of office required for elected officers of the state.

SECTION 8. Amends Section 74.107, Agriculture Code, to require the board to be composed of members elected from each statutory eradication zone established and validated by referendum, members appointed by the commissioner from other cotton growing areas of the state, and members appointed by the commissioner under Subsection (b). Requires the commissioner to appoint an initial board composed of 15 members. Prohibits, except as provided by Subsection (b), the term of each board position from exceeding four years. Deletes existing Subsection (a). Sets forth requirements regarding the making of appointments under this section by the commissioner. Authorizes the commissioner, rather than the board with the commissioner's approval, to change the number of board positions or the eradication zone representation on the board to accommodate changes in the number of eradication zones. Requires a vacancy on the board to be filled by appointment by the commissioner for the unexpired term. Authorizes the commissioner, upon 30 days' notice and opportunity for hearing, to replace any unelected board member of the foundation.

SECTION 9. Amends Sections 74.108(a) and (b), Agriculture Code, as follows:

Sec. 74.108. New heading: **POWERS OF BOARD AND COMMISSIONER**. Deletes certain authorizations of the board. Authorizes the board to borrow money, with the approval of the commissioner, as necessary to execute this chapter. Authorizes the commissioner, rather than the board, by rule, to add an area to an eradication zone under certain conditions. Requires the board to adopt a procurement policy according to certain provisions. Deletes existing Subsections (c) and (d). Makes conforming and nonsubstantive changes.

SECTION 10. Amends Section 74.109, Agriculture Code, by amending Subsections (a), (d), (e), (g), and (h), and adding Subsections (i) and (j), to require the board to make available to the state auditor for inspection at an annual independent audit all books, records of account, and minutes of proceedings maintained by the foundation. Provides that the financial transactions of the foundation are subject to audit by the state auditor in accordance with Chapter 321, Government Code. Provides that the foundation and the board are state agencies for certain purposes only, including indemnification under Chapter 104, Civil Practice and Remedies Code. Requires the board to collect data filed by the commissioner on the type and quantity of pesticides used in accordance with this subchapter. Provides that the foundation is subject to certain requirements. Prohibits a board member from voting on any matter in which the member has a direct pecuniary interest. Provides that a board member is subject to the same restrictions as a local public official under Chapter 171, Local Government Code. Makes conforming and nonsubstantive changes.

SECTION 11. Amends Section 74.110, Agriculture Code, as follows:

Sec. 74.110. **LIABILITY OF FOUNDATION MEMBERS, OFFICERS, AND EMPLOYEES AND APPLICATORS**. Sets forth the liability of the foundation's members, directors, officers, and employees; and provides that applicators are not individually liable to

a cotton grower or other person for errors in judgment, mistakes, or other acts of omissions. Sets forth additional provisions regarding the liability of an applicator as well as coverage of an applicator. Defines "applicator." Prohibits anything in this section from being construed to mean that an applicator or other person cannot be held responsible for violations of state and federal pesticide and herbicide laws and regulations adopted thereunder. Makes conforming changes.

SECTION 12. Amends Sections 74.112(f), (g), (h), and (i), Agriculture Code, to require the commissioner, if 40 percent or more of the producers eligible to vote within a zone participating in the program present to the commissioner, rather than the foundation, a petition calling for a referendum of the qualified voters on the proposition of discontinuing the program, to conduct a referendum for that purpose. Requires the commissioner to conduct the referendum within a certain deadline with an exception. Provides that approval of the proposition is by the same vote as required in a referendum under Section 74.114(g). Provides that if the proposition is approved, the eradication program is abolished and the eradication zone ceases to exist on payment of all debts of the eradication zone. Makes conforming changes.

SECTION 13. Amends Section 74.113, Agriculture Code, to require the commissioner, rather than the foundation, to propose, rather than determine, the assessment needed in each eradication zone to ensure the stability of the cotton industry by eradicating the public nuisance caused by the boll weevil and the pink bollworm, rather than to accomplish a certain goal regarding production of cotton. Requires the commissioner to make certain propositions in a referendum. Authorizes the foundation, with the commissioner's approval, to make an assessment in an eradication zone at a level less than the assessment approved by the referendum. Requires the commissioner to conduct an assessment referendum under the procedures provided by Section 74.114 of this code. Prohibits an assessment levied on cotton growers in an eradication zone from being used to pay another zone's bank loans or debts. Sets forth provisions regarding the assessment and the amount of the assessment. Requires the commission to give notice of and hold a public hearing within the eradication zone regarding the proposed assessment referendum. Sets forth certain requirements for the commissioner before the referendum. Requires the commissioner, on a zone-by-zone basis, to set the date on which assessments are due and payable. Requires the commissioner, each year, to review and approve the foundation's operating budget. Requires the foundation to prepare and mail billing statements to each cotton grower subject to the assessment that state the amount due and the due date. Requires the assessments to be paid in cash to the foundation.

SECTION 14. Amends Sections 74.114(a), (c), (d), (f), (h), and (i), Agriculture Code, to require the commissioner, rather than the foundation, to conduct a referendum or board election authorized under this subchapter. Requires the commissioner, at a certain time, to hold a referendum in the zone on the continuation of the eradication program. Requires the referendum to be held at the same time as the election of a board member from the zone. Provides that the approval of the referendum on continuation is by a majority of those voting in the referendum. Requires the commissioner to adopt rules for voting in board elections and referenda to establish eradication zones, rather than to adopt rules for voting in the initial board election and initial referenda. Deletes a requirement regarding the adoption of rules by the board for voting in other referenda and board elections. Sets forth requirements regarding rules adopted under this subsection. Sets forth additional provisions regarding a referendum or board election. Authorizes a public hearing regarding the proposed eradication program, including information regarding regulations to be promulgated by the commissioner, rather than by the foundation and the commission, to be held by the commissioner, rather than by the foundation.

SECTION 15. Amends Section 74.115, Agriculture Code, set forth the requirements regarding the amount of the penalty. Deletes existing Subsection (b) regarding a cotton grower who fails to pay all assessments and penalties. Authorizes the department, in addition to any other remedies for the collection of assessments and penalties, to place and perfect an assessment lien on cotton produced and harvested that year from certain acreage. Sets forth the priority regarding each assessment lien. Makes conforming changes.

SECTION 16. Amends Section 74.116, Agriculture Code, by amending Subsections (f) and (g) and adding Subsection (i), to authorize the commissioner to establish a payment plan for a cotton

grower applying for an exemption under this section. Requires the commissioner to promptly notify an applicant of the determination regarding the applicant's request for an exemption. Authorizes the commissioner, in addition to the authority provided under Subsections (a)-(h), and upon recommendation of the foundation, to reduce or waive assessment penalties as appropriate.

SECTION 17. Amends Section 74.117, Agriculture Code, to set forth provisions regarding entry of premises to carry out the purposes of this subchapter and Subchapters A and B of this chapter. Requires the commissioner to adopt rules that give notice to the cotton grower of the intent of the department, the foundation, or a designated representative of either entity to enter the cotton grower's fields or premises to carry out the purposes of this subchapter and Subchapters A and B of this chapter.

SECTION 18. Amends Sections 74.210(b), (c), and (d), Agriculture Code, to set forth provisions regarding the adoption of rules by which the foundation develops its procedures and methods of treatment. Authorizes the commissioner, rather than the foundation and the department, to adopt other reasonable rules necessary to carry out the purposes of this subchapter and Subchapters A and B of this chapter. Deletes text regarding the adoption of rules by the foundation under this section. Authorizes, rather than requires, an advisory committee to be established to assist the commissioner in the development of rules adopted under this section. Authorizes the advisory committee to be composed of certain persons.

SECTION 19. Amends Section 74.121, Agriculture Code, to authorize the foundation to provide an incentive for early and timely reporting.

SECTION 20. Amends Section 74.124(a), Agriculture Code, to authorize the foundation to carry out certain programs as approved by the commissioner. Prohibits an agency, person, or group of persons that enters into an agreement with the foundation under Subsection (a) to carry out programs in an eradication zone from entering into an agreement with the foundation to carry out programs in another eradication zone. Provides that this subsection does not preclude the sharing of technical information between an agency, person, or group of persons and the foundation.

SECTION 21. Amends Section 74.125, Agriculture Code, to make nonsubstantive and conforming changes.

SECTION 22. Amends Section 74.126(c), Agriculture Code, to make conforming changes.

SECTION 23. Amends Chapter 74D, Agriculture Code, by adding Sections 74.128 and 74.129, as follows:

Sec. 74.128. ANNUAL REPORT. Requires the board to issue to the commissioner and the appropriate oversight committee in the house of representatives an annual report detailing its efforts to carry out the purposes of this subchapter.

Sec. 74.129. EXEMPTION FROM EXECUTION. Sets forth provisions regarding exemption from execution.

SECTION 24. (a) Provides that all agreements made and obligations incurred by the Texas Boll Weevil Eradication Foundation, Inc., before the effective date of this Act are validated, ratified, and confirmed. Provides that the foundation's members, directors, officers, employees, and agents are not individually liable for, or in connection with, any agreement or obligation validated under this section.

(b) Provides that except for instances of gross negligence, individual criminal actions, or acts of dishonesty, the foundation's members, directors, officers, and employees, are not individually liable to a cotton grower or other person for errors in judgment, mistakes, or other acts or omissions made or occurring before the effective date of this Act under the authority of Chapter 74D, Agriculture Code, as originally enacted or subsequently amended.

(c) Provides that this section does not make any obligation validated, ratified, or confirmed

under this section a debt of this state.

SECTION 25. (a) Provides that assessments approved on February 28, 1994, for the Southern Rolling Plains Boll Weevil Eradication Zone, on December 1, 1994, and August 2, 1996, for the Central Rolling Plains Boll Weevil Eradication Zone, and on February 16, 1995, for the South Texas/Winter Garden Boll Weevil Eradication Zone, and all agreements and obligations of the foundation related to the statutory zones made or approved before the effective date of this Act are validated, ratified, and confirmed.

(b) Requires the commissioner, not later than one year after the effective date of this Act, to hold a retention referendum and board election in each statutory zone to determine the continued necessity of an eradication program under Section 74.114, Agriculture Code, as amended by this Act.

(c) Authorizes the commissioner, in each statutory zone, to solicit public comment through public hearings to determine whether to divide any of the statutory zones as defined in Section 74.1021, Agriculture Code, as added by this Act. Authorizes the commissioner, by rule, to divide a statutory zone and fairly apportion any debt to each portion of the divided zone, after considering public opinion. Provides that the referendum will be determined by a vote of the majority of cotton growers.

SECTION 26. Sets forth provisions regarding the adjustment of the composition of the board of directors of the Texas Boll Weevil Eradication Foundation, Inc.

SECTION 27. Repealers: Sections 74.103, 74.104, and 74.116(d)-(e), Agriculture Code (Certification by Commissioner; Certification, Revocation; Application Form and Notification - Exemption From Assessment Penalties).

SECTION 28. Emergency clause.
Effective date: upon passage.

SUMMARY OF COMMITTEE CHANGES

SECTION 1.

Replaces proposed SECTION 1 with new SECTION.

SECTION 2.

Redesignated to SECTION 14. Sets forth new a SECTION 2.

SECTION 3.

Redesignates proposed SECTION 3 as SECTION 29.

SECTIONS 4-13.

Sets forth new SECTIONS.

SECTION 14.

Redesignated from proposed SECTION 2. Amends proposed Section 74.113, to amend Subsections (a)-(d), rather than (a) and (b), and by adding new Subsections (g), (h), (i), and (j). Requires the commissioner, rather than the foundation, to propose, rather than determine, the assessment needed in each eradication zone. Makes conforming changes.

SECTION 15-28.

Sets forth new SECTIONS.

SECTION 29.

Redesignated from proposed SECTION 3.

Amendment 1.

Page 1, line 20, strike "individual programs of eradication and supervision" and substitute "integrated pest management programs."

Page 2, line 12, insert new Subdivision 4 and make conforming changes.

Page 4, line 16, strike "determined" and substitute "established."

Page 6, line 12, between "Baylor," and "Callahan," strike "Brown."

Page 7, line 3, strike "Taylor County and other areas" and substitute "Taylor County; and all land in Brown County east of a line following State Highway 279 to Brownwood and continuing along U.S. Highway 377 south to McCulloch County line; and other areas."

Page 7, line 7, strike "Glasscock and Midland counties south of a line 15 miles south of Interstate 20 running from Ector County line east to the Glasscock County line; Reagan" and substitute "Midland County south of a line 15 miles south of Interstate 20 running from Ector County line east to the Glasscock County line; Glasscock, Reagan."

Page 8, line 17, strike SECTION 5 and renumber proposed committee substitute accordingly.

Page 10, line 6, strike "ESTABLISHMENT OF ERADICATION ZONES" and substitute "CREATION OF NONSTATUTORY ERADICATION ZONES."

Page 12, line 16, strike "each eradication zone established by referendum" and substitute "each statutory eradication zone established and validated by referendum."

Page 13, line 15, adds "(e) On 30 days notice and opportunity for hearing, the commissioner may replace any unelected board member of the foundation."

Page 16, line 10, add Subdivision (3) regarding administrative procedure law.

Page 20, line 20, strike Subdivisions (5) and (6) and add new Subdivisions (5), (6), and (7).

Page 25, line 18, strike the last sentence and replace with "The commissioner shall adopt rules that give notice to the cotton grower of the intent of the department, the foundation, or a designated representative of either entity to enter the cotton grower's fields or premises to carry out the purpose of this subchapter and Subchapters A and B of this chapter."

Page 26, line 17, strike "foundation and the department" and substitute "commissioner."

Page 28, line 20, add after "zone.": "This subsection does not preclude the sharing of technical information between an agency, person, or group of persons and the foundation."

Page 30, line 13, strike "Official Cotton Growers' Boll Weevil Eradication Foundation" and substitute "the Texas Boll Weevil Eradication Foundation, Inc.,".

Page 31, strike proposed SECTION 26 and replace with new SECTION 26.

Page 32, line 12, add Section "74.104," between "74.103" and "and".

Amendment 1a.

Page 31, line 15, strike "two years" and substitute "one year."

Page 31, line 19, add the following after the period: "The retention referendum will be determined by a vote of the majority of the cotton growers."

Amendment 2.

Page 21, line 20, add "At the end of each four-year period in which an eradication program has been operational in a zone, the commissioner shall hold a referendum in the zone on the continuation of the eradication program. The referendum shall be held at the same time as the election of a board member from the zone. Approval of the referendum on continuation is by a majority of those voting in the referendum."

Amendment 3.

Page 15, line 12, add "(a)" after "Subsection" and before "d." Add the following between lines 13 and 14: "(a) The board shall make available to the state auditor for inspection at an annual independent audit all books, records of account, and minutes of proceedings maintained by the foundation. The financial transactions of the foundation are subject to audit by the state auditor in accordance with Chapter 321, Government Code."

Page 23, line 11, insert "notice" and before ",": "and opportunity for hearing".

Amendment 4.

Page 18, between lines 11 and 12, insert new Subsection (g).

Amendment 5.

Page 3, lines 1-14, to replace proposed Section 74.1011 with new Section 74.1011, regarding designation of an entity to carry out boll weevil eradication.

Amendment 8.

Page 7, lines 12-19, replace Subsection (d) with new Subsection (d) regarding the South Texas Winter Garden Eradication Zone.