

## **BILL ANALYSIS**

Senate Research Center

H.B. 1840  
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Agriculture & Rural Affairs  
5/10/2011  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

According to the Texas Department of Agriculture, 17 grain elevators—some full of corn, sorghum, wheat, and other grains—abruptly went bankrupt or failed in the past two years. Many farmers lost hundreds of thousands of dollars when the failed elevators closed their doors.

Grain farmers have no legitimate way to reclaim their losses without lengthy legal battles delivering marginal compensation. In the event that a warehouse becomes insolvent, bonds held by warehouses as required under current law pay only a fraction of the value of the crop.

H.B. 1840 amends current law relating to the creation and functions of the Texas Grain Producer Indemnity Board.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Grain Producer Indemnity Board in SECTION 3 (Sections 41.209 and 41.211, Agriculture Code) of this bill.

Rulemaking authority is expressly granted to the commissioner of agriculture in SECTION 3 (Section 41.212, Agriculture Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 41.001, Agriculture Code, as follows:

Sec. 41.001. POLICY. Provides that it is in the interest of the public welfare of the State of Texas that the producers of any agricultural commodity be permitted and encouraged to develop, carry out, and participate in programs of research, disease and insect control, predator control, education, indemnification, and promotion designed to encourage the production, marketing, and use of the agricultural commodity. Provides that the purpose of this chapter is to authorize and prescribe the necessary procedures by which the producers of an agricultural commodity grown in this state may finance those programs. Authorizes the programs to be devised to alleviate any circumstance or condition that serves to impede the production, marketing, or use of any agricultural commodity.

SECTION 2. Amends Section 41.058(e), Agriculture Code, to authorize commodity producers boards to 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, indemnification, and promotion designed to encourage the production, marketing, and use of the commodity on which the assessment is levied.

SECTION 3. Amends Chapter 41, Agriculture Code, by adding Subchapter I, as follows:

#### **SUBCHAPTER I. TEXAS GRAIN PRODUCER INDEMNITY BOARD**

Sec. 41.201. DEFINITIONS. Defines, in this subchapter, "board," "claim initiation date," "financial failure," "grain," "grain buyer," and "grain producer."

Sec. 41.202. DECLARATION OF POLICY. (a) Provides that the legislature intends for the Texas Grain Producer Indemnity Board (board) to indemnify grain producers for economic hardships in the event that a grain buyer is unable to pay the grain producer for the grain producer's grain.

(b) Requires the board to be the certified organization to indemnify grain producers under this subchapter.

Sec. 41.203. CONFLICT WITH GENERAL COMMODITY LAW PROVISIONS. Provides that to the extent that this subchapter conflicts with other provisions of this chapter, this subchapter prevails.

Sec. 41.204. BOARD. (a) Provides that the board is composed of:

(1) one representative of each of the following organizations or their successor organizations who is recommended to the commissioner of agriculture (commissioner) by the board of directors of the organization and appointed by the commissioner:

(A) the Corn Producers Association of Texas;

(B) the Texas Wheat Producers Association;

(C) the Texas Grain Sorghum Association;

(D) the Texas Soybean Association; and

(E) the Texas Farm Bureau; and

(2) the following members, appointed by the commissioner:

(A) one representative of either the Texas Agricultural Cooperative Council, the Texas Grain & Feed Association, or one of their successor organizations;

(B) one representative of the non-warehouse grain-buying industry;

(C) one member with expertise in production agriculture financing; and

(D) one attorney with expertise in bankruptcy and grain contracts.

(b) Authorizes members of the board to serve staggered terms of two years each and to serve for a maximum of three terms.

(c) Requires the directors described by Subsection (a)(1) to select a chair and vice chair from among those directors.

(d) Requires a vacancy on the board, including a vacancy resulting from the failure of a board member to fulfill the board member's responsibilities, to be filled in the manner provided by Subsection (a). Authorizes the commissioner, if a vacancy on the board is the result of an organization described by Subsection (a) dissolving or failing to fulfill its responsibilities under this subchapter, to fill the vacancy by appointing an individual from the sector or industry represented by the organization.

Sec. 41.205. DUTIES OF BOARD. Requires the board to meet at least once each year to:

- (1) review expenses of the board, claims made to the board by grain producers, and amounts paid on claims by the board;
- (2) coordinate all matters relating to the board, including the board's budget under Section 41.059 (Budget; Annual Report; Audits), and the revenues necessary to accomplish the purposes of the board;
- (3) establish, maintain, or adjust the rate of assessments collected under Section 41.206; and
- (4) determine the most effective use of the board's budget to provide protection to grain producers.

Sec. 41.206. COLLECTION OF ASSESSMENT. (a) Requires a grain buyer, except as provided by this subsection, to collect assessments in the manner prescribed for processors under Section 41.081 (Collection of Assessment). Provides that Section 41.081(b) (relating to collection of assessment) does not apply to the collection of assessments under this section.

- (b) Requires the grain buyer, except as provided by Subsection (c), not later than the 10th day of each quarter of the calendar year, to remit the amount collected during the preceding quarter to the secretary-treasurer of the board for deposit with the bank selected by the board under Section 41.060 (Depository Bank; Expenditure of Funds).
- (c) Authorizes the grain buyer to retain a portion of the assessment in an amount determined by the board to cover the grain buyer's administrative costs in collecting the assessment.

Sec. 41.207. ASSESSMENTS; APPLICABILITY OF OTHER LAW. (a) Requires an assessment levied on grain producers to be applied by the board to efforts relating to the indemnification of grain producers in this state, including administrative costs of conducting an assessment referendum.

- (b) Provides that assessments collected by the board are not state funds and are not required to be deposited in the state treasury.
- (c) Provides that Sections 41.082 (Producer Exemption) and 41.083 (Producer Funds) do not apply to an assessment collected under this subchapter.

Sec. 41.208. INITIATION OF CLAIM. (a) Authorizes a grain producer who has delivered grain to a grain buyer to initiate a claim with the board as provided by board rule if:

- (1) the grain buyer has suffered a financial failure and:
  - (A) has failed to pay to a grain producer an amount owed to the grain producer; or
  - (B) is unable to deliver to the grain producer grain held by the grain buyer for the grain producer as a bailment; and
- (2) the grain producer provides to the board:
  - (A) written documentation showing that the grain was delivered to the grain buyer; and
  - (B) a copy of the written contract for purchase of the grain signed by the grain producer and the grain buyer and showing the agreed price for the grain, the amount of grain purchased, and any other

relevant term required by the board to establish facts related to the claim.

(b) Requires a claim under this section to:

- (1) be initiated not more than 60 days after the applicable claim initiation date; and
- (2) be for a loss of grain delivered to the grain buyer not more than one year before the applicable claim initiation date.

Sec. 41.209. PAYMENT OF CLAIM. (a) Authorizes the board, after a claim is initiated by a grain producer under Section 41.208, to take any action necessary to:

- (1) investigate the grain producer's claim; and
- (2) determine the amount due to the grain producer within the limit prescribed by Subsection (b) and subject to Subsection (e).

(b) Authorizes the board, in determining the amount due to a grain producer under Subsection (a) for a loss of grain, to award the grain producer not more than 90 percent of:

- (1) the value of the grain on the claim initiation date, as determined by board rule, if the grain has not been sold; or
- (2) the contract price of the grain, if the grain has been sold.

(c) Requires the board, except as provided by Subsection (d), to, not later than the 30th day after the date the board makes a determination under Subsection (a):

- (1) pay to the grain producer the amount determined under Subsection (a); or
- (2) notify the grain producer that the grain producer's claim is denied.

(d) Requires the board, if claims filed with the board that are due to grain producers under this section exceed the amount of the board's budget allocated for the payment of claims, to pay each grain producer on a prorated basis without regard to the order in which claims are made or approved. Requires the board to pay the remainder of the amount owed to each grain producer on a prorated basis from future revenue as the revenue is collected.

(e) Authorizes the board to deny a grain producer's claim in whole or in part:

- (1) if the grain producer has a history of failure to pay assessments under Section 41.206;
- (2) if the applicable grain buyer has a history of failure to collect assessments as required by Section 41.206;
- (3) if the documentation submitted by the grain producer in support of the grain producer's claim is incomplete, false, or fraudulent;
- (4) to prevent the grain producer from recovering from multiple payments an amount greater than the amount the grain producer lost due to the financial failure of a grain buyer or to the grain buyer's refusal, failure, or inability to deliver to the grain producer grain held by the grain buyer as a bailment, including:

- (A) payments made by the board;
- (B) payments made from a grain warehouse operator's bond;
- (C) payments ordered by a bankruptcy court; or
- (D) a recovery under a state or federal crop insurance policy or program; or

(5) if documentation submitted by the grain producer demonstrates that deferred payment on sold grain was beyond normal and customary practices.

(f) Authorizes the board to adopt rules specifying the circumstances under which a claim may be denied in whole or in part under Subsection (e).

**Sec. 41.210. REIMBURSEMENT OF BOARD BY GRAIN BUYER; SUBROGATION OF RIGHTS.** (a) Provides that, if the board pays a claim against a grain buyer, the board is subrogated to all rights of the grain producer against:

(1) the grain buyer, to the extent of the amount paid to a grain producer by the board; and

(2) any other entity from which the grain producer is entitled to a payment for the loss giving rise to the grain producer's claim under this subchapter.

(b) Requires that funds recovered under this section be deposited with the depository bank selected by the board under Section 41.060.

**Sec. 41.211. RULES.** Authorizes the board, except as provided by Section 41.212, to adopt rules as necessary to implement this subchapter, including rules relating to:

(1) notice and collection of assessments;

(2) the management of the board's budget;

(3) administration of the board's duties;

(4) the statewide referendum conducted under Section 41.212;

(5) the selection of agents, designees, or devices to carry out the intent of the board; and

(6) guidelines for industry practices that do or do not qualify for indemnification by the board.

**Sec. 41.212. REFERENDUM; BALLOTING.** (a) Requires the commissioner to conduct a referendum of grain producers to determine the maximum amount that may be assessed to a grain producer under Section 41.206.

(b) Provides that only a grain producer who has sold grain to a grain buyer in the 36 months preceding the date of the referendum is eligible to vote in the referendum.

(c) Authorizes an eligible grain producer to vote only once in a referendum.

(d) Provides that each grain producer's vote is entitled to equal weight regardless of the grain producer's volume of production.

- (e) Provides that a referendum is approved if a simple majority of votes are cast in favor of the referendum.
- (f) Provides that individual voter information, including an individual's vote in a referendum conducted under this section, is confidential and not subject to disclosure under Chapter 552 (Public Information), Government Code.
- (g) Requires the board to locate private sources, including the organizations described by Section 41.204(a)(1), to pay all expenses incurred in conducting a referendum.
- (h) Requires the commissioner to adopt rules as necessary to implement this section.

Sec. 41.213. NOTICE OF REFERENDUM. (a) Requires the commissioner to give public notice of:

- (1) the date, hours, and polling places for voting in the referendum conducted under Section 41.212;
  - (2) the estimated amount of the assessment proposed to be collected, as determined by the board, and the basis for which the assessment will be collected; and
  - (3) a description of the manner in which the assessment is to be collected and the proceeds administered and used.
- (b) Requires the commissioner to publish the notice under Subsection (a) in one or more statewide or regional newspapers that provide reasonable notice throughout the state. Requires the notice to be published at least 60 days before the date of the referendum. Requires the commissioner, in addition, at least 60 days before the date of the referendum, to give direct written notice to the county agent in each county of this state.

Sec. 41.214. REFUND OF ASSESSMENTS. (a) Authorizes a grain producer who has paid an assessment under Section 41.206, except as provided by Subsection (d), to obtain a refund of the amount paid by filing an application for refund with the board.

- (b) Requires the application to:
- (1) be in writing, on a form prescribed by the board for that purpose; and
  - (2) be accompanied by proof of payment of the assessment, and an affidavit stating that the grain producer does not wish to participate in or be covered by the indemnification established under this subchapter.
- (c) Prohibits a grain producer who receives a refund under this section from making a claim for indemnification under Section 41.208 for the grain for which the refund was received.
- (d) Requires the board, if requests for refunds under this section exceed the amount of the board's budget allocated for the payment of claims, to issue refunds to each grain producer on a prorated basis without regard to the order in which requests for refunds are made. Requires the board to pay the remainder of the amount owed to each grain producer on a prorated basis from future revenue as the revenue is collected.

Sec. 41.215. ANNUAL REPORT. (a) Requires the board to submit a report to the commissioner annually that contains a summary of the board's activities and a review of the board's effectiveness.

(b) Requires the board to post the report online on the board's Internet website.

SECTION 4. (a) Requires the entities specified in Section 41.204, Agriculture Code, as added by this Act, as soon as practicable on or after the effective date of this Act, but not later than December 31, 2011, to recommend and the commissioner of agriculture to appoint the members of the board in compliance with that section to serve terms that begin January 1, 2012.

(b) Requires the members of the board appointed under Subsection (a) of this section to draw lots to determine which initial terms of four members expire January 1, 2013, and which initial terms of five members expire January 1, 2014.

SECTION 5. Effective date: September 1, 2011.