

## **BILL ANALYSIS**

Senate Research Center  
82R7803 TRH-D

S.B. 1232  
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5/5/2011  
As Filed

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

According to the Texas Department of Agriculture (TDA), 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 the warehouses as required under current law paid only a fraction of the value of the crop.

S.B. 1232 establishes the Texas Grain Producers Indemnity Fund, allowing grain producers to pay assessments to protect themselves from financial ruin in the event that a grain buyer is unable to pay a grain producer for grain. Most of the major grain farming states have had indemnity boards or similar arrangements for decades. S.B. 1232 seeks to provide protections to Texas grain producers by creating a board for the purpose of indemnifying grain producers for economic hardships in the event that a grain buyers is unable to pay a grain producer for grain.

As proposed, S.B. 1232 amends current law relating to the creation of the grain producer indemnity fund.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the commissioner of agriculture in SECTION 1 (Section 14B.013, Agriculture Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Title 2, Agriculture Code, by adding Chapter 14B, as follows:

#### CHAPTER 14B. GRAIN PRODUCER INDEMNITY FUND

Sec. 14B.001. DEFINITIONS. Defines, in this chapter, "board," "claim initiation date," "financial failure," "fund," "grain," "grain buyer," and "grain producer."

Sec. 14B.002. FUND. (a) Provides that the grain producer indemnity fund (fund) is a special trust fund with the comptroller of public accounts (comptroller) administered by the Texas Department of Agriculture (TDA), without appropriation, for the payment of claims against a grain buyer who has experienced a financial failure.

(b) Requires TDA to deposit assessments remitted under Section 14B.009 in the fund.

(c) Requires interest or other income from investment of the fund to be deposited to the credit of the fund.

(d) Requires the grain producer indemnity fund board (board) to set a minimum balance for the fund to be held in reserve to pay for administrative costs in the event that claims against the fund exceed the total balance of the fund.

(e) Requires TDA in conjunction with the board to set an annual administration fee to be paid to TDA out of the fund to compensate TDA for the cost of administering the fund and implementing TDA's authority under this chapter, including costs associated with investigation and enforcement.

Sec. 14B.003. BOARD. (a) Provides that the board is composed of one representative of each of the following organizations who is recommended to the commissioner of agriculture (commissioner) by the board of directors of the organization and appointed by the commissioner:

- (1) the Corn Producers Association of Texas;
- (2) the Texas Wheat Producers Association;
- (3) the Texas Grain Sorghum Association;
- (4) the Texas Soybean Association;
- (5) the Texas Farm Bureau;
- (6) the Texas Agricultural Cooperative Council; and
- (7) the Texas Grain & Feed Association.

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

(c) Requires the directors described by Subsections (a)(1)-(5) to select a chair and vice chair from among those directors. Provides that the chair and vice chair serve as chair or vice chair for a term of one year and are prohibited from serving as chair or vice chair for consecutive terms.

(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 chapter, to fill the vacancy by appointing an individual from the sector or industry represented by the organization.

Sec. 14B.004. BOARD CONFLICT OF INTEREST. (a) Prohibits an officer, employee, or paid consultant of a Texas trade association in the field of agriculture from being a member of the board.

(b) Prohibits a person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of agriculture from being a member of the board.

(c) Provides that, for the purposes of this section, a Texas trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(d) Prohibits a person from serving as a member of the board if the person is required to register as a lobbyist under Chapter 305 (Registration of Lobbyists), Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

Sec. 14B.005. REMOVAL OF BOARD MEMBER. (a) Provides that it is a ground for removal from the board if a member:

- (1) violates a prohibition established by Section 14B.004;
- (2) cannot because of illness or disability discharge the member's duties for a substantial part of the term for which the member is appointed; or
- (3) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the board.

(b) Provides that the validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists.

Sec. 14B.006. STANDARDS OF CONDUCT. Requires the commissioner or the commissioner's designee to provide to members of the board, as often as necessary, information regarding their qualification for office under this chapter and their responsibilities under applicable laws relating to standards of conduct for state officers.

Sec. 14B.007. BOARD MEMBER TRAINING. (a) Requires a member, before the member of the board may assume the member's duties, to complete at least one course of the training program established under this section.

(b) Requires a training program established under this section to provide information to the member regarding:

- (1) the enabling legislation that created the board;
- (2) the programs operated by the board;
- (3) the role and functions of the board;
- (4) the rules of the board;
- (5) the current budget for funds the board administers;
- (6) the results of the most recent formal audit of the board;
- (7) the requirements of Chapter 551 (Open Meetings), Government Code, Chapter 552 (Public Information), Government Code, and Chapter 2001 (Administrative Procedure), Government Code;
- (8) the requirements of the conflict of interest laws and other laws relating to public officials; and
- (9) any applicable ethics policies adopted by TDA or the Texas Ethics Commission.

Sec. 14B.008. DUTIES OF BOARD. (a) Requires the board, in conjunction with TDA, to meet at least once each year to:

- (1) review claims made against the fund and amounts paid on claims from the fund;
- (2) coordinate all matters relating to the fund, including the fund's budget and the revenues necessary to accomplish the purposes of the fund;

(3) consider rules for adoption by TDA relating to the collection of assessments, the payment of claims from the fund, and the administration of the fund;

(4) establish, maintain, or adjust the assessment rate; and

(5) conduct adjudicative hearings on disputed claims presented for payment from the fund.

(b) Requires the board, in conjunction with TDA, to establish a range of minimum and maximum fund balances that shall be maintained at all times. Authorizes the range of minimum and maximum fund balances to be changed by a majority vote of the board. Requires the board to suspend or reenact the collection of assessments under Section 14B.009 in order to maintain a fund balance within the applicable range of minimum and maximum established under this subsection.

Sec. 14B.009. COLLECTION OF ASSESSMENT. (a) Requires a grain buyer, at the first point of sale of grain, to collect an assessment in an amount determined by the board that is a percentage of the purchase price of the grain by deducting the appropriate amount from the purchase price of the grain or from any funds advanced for that purpose.

(b) Requires the grain buyer, not later than the 10th day of each quarter of the calendar year, to remit the amount collected under Subsection (a) during the preceding quarter to the department for deposit into the fund, together with any documents, records, and reports required by TDA.

Sec. 14B.010. INITIATION OF CLAIM. (a) Authorizes a grain producer who has delivered grain to a grain buyer to initiate a claim against the fund as provided by department rule if:

(1) the grain buyer:

(A) has suffered a financial failure and has failed to pay to a grain producer an amount owed to the grain producer on or before the date specified in a contract for the purchase of grain, or if the contract does not specify a payment due date the 10th day after the date of purchase, if the purchase occurs after the grain is delivered or the 10th day after the date of delivery, if the purchase occurs before the grain is delivered; or

(B) refuses, fails, or is unable to deliver to the grain producer all or part of the grain held by the grain buyer as a bailment; and

(2) the grain producer provides to TDA:

(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 buyer and showing the agreed price for the grain, the amount of grain purchased, and any other term required by TDA.

(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. 14B.011. PAYMENT OF CLAIM. (a) Authorizes TDA, after a claim is initiated by a grain producer under Section 14B.010, 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 (f).

(b) Authorizes TDA, 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 department rule, if the grain has not been sold; or

(2) the contract price of the grain, if the grain has been sold.

(c) Prohibits TDA from imposing a maximum amount that a grain producer may claim under this chapter.

(d) Requires TDA, except as provided by Subsection (e), to, not later than the 30th day after the date the department 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.

(e) Requires TDA, if claims against the fund that are due to grain producers under this section exceed the balance of the fund, to pay each grain producer on a prorated basis without regard to the order in which claims are made or approved. Requires TDA to pay the remainder of the amount owed to each grain producer on a prorated basis from future fund revenue as the revenue is collected.

(f) Authorizes TDA 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 14B.009;

(2) if the applicable grain buyer has a history of failure to remit assessments to TDA as required by Section 14B.009;

(3) if the documentation submitted by the grain producer in support of the grain producer's claim is incomplete, false, or fraudulent; or

(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 from the fund;

(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.

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

Sec. 14B.012. REIMBURSEMENT OF FUND BY GRAIN BUYER; SUBROGATION OF RIGHTS. (a) Requires a grain buyer, if the department pays a claim against a grain buyer, to:

(1) reimburse the fund immediately or agree in writing to reimburse the fund on a schedule determined by TDA rule; and

(2) immediately pay the remaining amount due to the grain producer that was not paid by the fund in a manner determined by TDA.

(b) Requires a grain buyer who makes a payment to a grain producer or to the fund under this section, in addition to the amount required to be paid under Subsection (a), to pay interest at the rate of eight percent per year.

(c) Provides that if TDA pays a claim against a grain buyer, TDA 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 from the fund; 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 chapter.

(d) Requires funds recovered under this section to be deposited to the credit of the fund.

Sec. 14B.013. RULES. Authorizes the commissioner to adopt rules as necessary to implement this chapter, including rules relating to:

(1) notice and collection of assessments;

(2) payment of claims from the fund;

(3) administration of the fund; and

(4) the statewide referendum conducted under Section 14B.017.

Sec. 14B.014. SUSPENSION OR REVOCATION OF LICENSE. Provides that, in addition to other remedies provided by law, a violation of any provision of this chapter or a rule adopted under this chapter is grounds for suspension or revocation of any license or permit issued by TDA.

Sec. 14B.015. CIVIL PENALTY; INJUNCTION. (a) Provides that a person who violates this chapter or a rule adopted under this chapter is liable to the state for a civil penalty not to exceed \$10,000 for each violation. Authorizes each day a violation continues to be considered a separate violation for purposes of a civil penalty assessment.

(b) Requires the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred, on request of TDA, to file suit to collect the penalty.

(c) Requires a civil penalty collected under this section to be deposited into the fund. Requires all civil penalties recovered in suits first instituted by a local government or governments under this section to be equally divided between the

fund and the local government or governments with 50 percent of the recovery to be paid to the fund and the other 50 percent equally to the local government or governments first instituting the suit.

(d) Entitles TDA to appropriate injunctive relief to prevent or abate a violation of this chapter or a rule adopted under this chapter. Requires the attorney general or the county or district attorney of the county in which the alleged violation is threatened or is occurring, on request of TDA, to file suit for the injunctive relief. Provides that venue is in any county in which the alleged violation is threatened or is occurring.

Sec. 14B.016. DISTRIBUTION OF FINES. Requires a fine collected in relation to a violation of Chapter 31 (Theft), Penal Code, in connection with the collection or remittance of an assessment due under this chapter, notwithstanding a provision to the contrary in the Code of Criminal Procedure, to be divided between the fund and the county in which the prosecution occurs, with 50 percent of the recovery to be paid to the fund and 50 percent to the county.

Sec. 14B.017. REFERENDUM; BALLOTING. (a) Requires the commissioner to conduct a referendum of grain producers to determine:

(1) whether grain producers desire to establish the fund; and

(2) if the creation of the fund is approved, the maximum amount that may be assessed to a grain producer under Section 14B.009.

(b) Provides that only a grain producer who has sold grain to a grain buyer in the 12 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) Entitles each grain producer's vote 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, Government Code.

(g) Requires the board to pay all expenses incurred in conducting a referendum with funds collected from the grain industry.

(h) Authorizes the commissioner, if a referendum under this section is not approved, to conduct another referendum. Prohibits a referendum under this subsection from being held before the first anniversary of the date on which the previous referendum on the same issue was held.

Sec. 14B.018. 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 14B.017;

(2) the maximum amount and basis of the assessment proposed to 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 not less than once a week for three consecutive weeks, beginning 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.

SECTION 2. Amends Section 12.020(c), Agriculture Code, to set forth the provisions of the law subject to this section and the applicable penalty amounts.

SECTION 3. (a) Requires the entities specified in Section 14B.003, 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 Grain Producer Indemnity Fund 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 three members expire January 1, 2013, and which initial terms of four members expire January 1, 2014.

(c) Prohibits TDA from paying a claim against the fund under Section 14B.011, Agriculture Code, as added by this Act, until the fund balance reaches the minimum balance set by the board under Section 14B.008, Agriculture Code, as added by this Act.

SECTION 4. Effective date: September 1, 2011.