

BILL ANALYSIS

Senate Research Center

S.B. 1099
By: Estes et al.
Agriculture, Water & Rural Affairs
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Grain producers sell to various grain buyers, including grain warehouses or elevators. Frequently, the producer stores the grain at a warehouse to be sold at a later date. Over the last few years, several grain warehouses have become financially insolvent. The producers were unable to recoup any of their grain, and the bonds held by the warehouses as required under current law paid only a fraction of the value of the crop. This loss was devastating to many producers in Texas.

H.B. 1840, 82nd Legislature, Regular Session, 2011, created the Texas Grain Producer Indemnity Board and provided for the establishment of a fund through a referendum of grain producers. A referendum was held; however, the measure did not receive the necessary votes.

Another large grain buyer has become financially insolvent, and interested parties are seeking again to establish a grain indemnity fund. S.B. 1099 amends the current statute pertaining to the establishment of a grain indemnity fund in order to address the concerns that stakeholders had with the original legislation, in anticipation of holding another referendum on this issue.

S.B. 1099 amends current law relating to the operation and functions of the Texas Grain Producer Indemnity Board.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Grain Producer Indemnity Board is modified in SECTION 7 (Section 41.209, Agriculture Code) and SECTION 9 (Section 41.211, Agriculture Code) of this bill.

Rulemaking authority is expressly granted to the Texas Grain Producer Indemnity Board in SECTION 11 (Section 41.2145, Agriculture Code) and SECTION 12 (Section 41.216, Agriculture Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 41.102, Agriculture Code, as follows:

Sec. 41.102. SUSPENSION OR REVOCATION OF LICENSE. Provides that, in addition to other remedies provided by law, a violation of any provision of Subchapter B (Certification of Organizations to Conduct Referendum and Election), C (Referenda and Elections), D (Organization, Powers, and Duties of Boards), E (Assessments), or I, rather than Subchapters B-E, of this chapter is grounds for suspension or revocation of any license or permit issued by the commissioner of agriculture (commissioner). Requires that the suspension or revocation be conducted in accordance with the procedures provided by law for suspension or revocation on the basis of other grounds.

SECTION 2. Amends Section 41.201, Agriculture Code, by adding Subdivisions (3-a) and (8), to define "fund" and "reinsurance."

SECTION 3. Amends Subchapter I, Chapter 41, Agriculture Code, by adding Section 41.2035, as follows:

Sec. 41.2035. FUND. (a) Provides that the grain producer indemnity fund (fund) is a trust fund outside the state treasury to be held and administered by the Texas Grain Producer Indemnity Board (board), without appropriation, for the payment of claims against a grain buyer who has experienced a financial failure.

(b) Requires the board to deposit assessments remitted under Section 41.206 (Collection of Assessment) in the fund.

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

(d) Requires the board, as a part of the annual budget proposal procedure described by Section 41.059 (Budget; Annual Reports; Audits), 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. Requires the board to post the minimum balance set under this subsection on the board's Internet website.

SECTION 4. Amends the heading to Section 41.205, Agriculture Code, to read as follows:

Sec. 41.205. POWERS AND DUTIES OF BOARD.

SECTION 5. Amends Section 41.205, Agriculture Code, by adding Subsection (f), to authorize the board to borrow money, with the approval of the commissioner, as necessary to implement this subchapter.

SECTION 6. Amends Section 41.206(a), Agriculture Code, as follows:

(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). Requires that the assessment be collected at the first point of sale. Provides that Section 41.081(b) (requiring the processor, if the producer and processor are the same legal entity, or if the producer retains ownership after processing, to collect the assessment directly from the producer at the time of processing) does not apply to the collection of assessments under this section.

SECTION 7. Amends Sections 41.209(b) and (f), Agriculture Code, as follows:

(b) Authorizes the board, in determining the amount due to a grain producer under Subsection (a) (authorizing the board, after a claim is initiated by a grain producer under Section 41.208, to take any action necessary to investigate the grain producer's claim and determine the amount due to the grain producer within the limit prescribed by Subsection (b) and subject to Subsection (f)) for a loss of grain, to award the grain producer 85 percent, rather than 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.

(f) Authorizes the board to deny a grain producer's claim in whole or in part if the grain producer has failed to pay assessments under Section 41.206, rather than failed to pay assessments for the current growing season under Section 41.206.

SECTION 8. Amends Section 41.210, Agriculture Code, as follows:

Sec. 41.210. New heading: REIMBURSEMENT OF BOARD BY GRAIN BUYER; SUBROGATION OF RIGHTS; REINSURANCE. (a) Provides that, if the board pays a claim against a grain buyer, the board is subrogated to the extent of the amount paid to a

grain producer by the board to all rights of the grain producer against the grain buyer and 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. Deletes existing text providing that, if the board pays a claim against a grain buyer, the board is subrogated to all rights of the grain producer against the grain buyer, to the extent of the amount paid to a grain producer by the board. Deletes the designations of existing Subdivisions (1) and (2).

(b) Makes no change to this subsection.

(c) Authorizes the board to purchase reinsurance policies to mitigate the board's financial risks.

SECTION 9. Amends Section 41.211, Agriculture Code, as follows:

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

(1) notice and collection of assessments;

(2) the orderly distribution of refunds;

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

(4) the use of insurance and reinsurance products;

(5) Redesignates existing Subdivision (3) as Subdivision (5). Makes no further change to this subdivision;

(6) Redesignates existing Subdivision (4) as Subdivision (6). Makes no further change to this subdivision;

(7) Redesignates existing Subdivision (5) as Subdivision (7). Makes no further change to this subdivision; and

(8) Redesignates existing Subdivision (6) as Subdivision (8). Makes no further change to this subdivision.

SECTION 10. Amends Section 41.212(e), Agriculture Code, as follows:

(e) Provides that a referendum is approved if a majority of votes cast are in favor of the referendum. Deletes existing text providing that a referendum is approved if the referendum meets the requirements of Section 41.031 (Certification of Results).

SECTION 11. Amends Subchapter I, Chapter 41, Agriculture Code, by adding Section 41.2145, as follows:

Sec. 41.2145. REFUND OF ASSESSMENTS. (a) Authorizes a grain producer who has paid an assessment under Section 41.206 to be eligible for a refund from excess money in the indemnity fund as provided by this section.

(b) Requires the board, as a part of the annual budget proposal procedure described by 41.059, to review the budget for the next year and the board's current financial status. Requires the board, based on that review, to determine whether funds are available in excess of the minimum fund balance to issue refunds to grain producers who paid an assessment under Section 41.206.

(c) Requires the board to adopt rules regarding the procedure for determining the amount of a grain producer's refund and the timing, method, and order of refund issuance.

SECTION 12. Amends Subchapter I, Chapter 41, Agriculture Code, by adding Section 41.216, as follows:

Sec. 41.216. ADMINISTRATIVE REVIEW. (a) Requires the board by rule to establish an administrative review process to informally review and resolve claims arising from an action of the board under this subchapter. Requires the board to adopt rules:

(1) designating which board actions are subject to review under this section; and

(2) outlining available remedial actions.

(b) Authorizes a person to appeal an administrative review decision made by the board under Subsection (a) to the commissioner.

(c) Authorizes a person to appeal a decision of the commissioner in the manner provided for a contested case under Chapter 2001 (Administrative Procedure), Government Code.

(d) Provides that this section does not waive this state's sovereign immunity.

SECTION 13. Repealer: Section 41.214 (Refund of Assessments), Agriculture Code.

SECTION 14. (a) Makes application of the change in law made by this Act to Section 41.102, Agriculture Code, prospective.

(b) Makes application of the repeal of Section 41.214, Agriculture Code, by this Act, prospective in regards to an application for a refund.

SECTION 15. Effective date: upon passage or September 1, 2015.