

## **BILL ANALYSIS**

S.B. 1099  
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Agriculture & Livestock  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Grain producers sell to various grain buyers, including grain warehouses, but also frequently store the grain at warehouses to be sold at a later date. Interested parties note that over the past few years several grain warehouses have become financially insolvent. The parties note that the producers who stored grain at these warehouses were unable to recoup their grain and that the required bonds held by the warehouses paid only a fraction of the value of the grain. This loss was devastating to many grain producers in Texas.

Recent legislation provided for the creation of the Texas Grain Producer Indemnity Board. According to the interested parties, the board held a referendum, pursuant to that legislation, for grain producers to vote on the issue of establishing a statewide grain indemnity fund, but the measure did not receive the necessary votes for the fund to be established. The parties note, however, that certain stakeholders are seeking again to establish a grain indemnity fund as another large grain buyer has recently become financially insolvent. S.B. 1099 seeks to address this issue and certain stakeholder concerns.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Grain Producer Indemnity Board in SECTIONS 11 and 12 of this bill.

### **ANALYSIS**

S.B. 1099 amends the Agriculture Code to establish the grain producer indemnity fund as a trust fund outside the state treasury to be held and administered by the Texas Grain Producer Indemnity Board, without appropriation, for the payment of claims against a grain buyer who has experienced a financial failure. The bill requires the board to deposit commodity assessments remitted by grain buyers in the fund and requires interest or other income from investment of the fund to be deposited to the credit of the fund. The bill requires an assessment to be collected at the first point of sale. The bill requires the board, as a part of the annual budget proposal procedure, 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. The bill requires the board to post the minimum balance on the board's website.

S.B. 1099 authorizes the board, with the approval of the commissioner of agriculture, to borrow money as necessary to implement the board's governing provisions. The bill changes the amount that the board may award a grain producer for a loss of grain from an amount not more than 90 percent to an amount that is 85 percent of the value of the grain on a claim initiation date for

grain that has not been sold or of the contract price of the grain for grain that has been sold. The bill removes a provision that restricted the board's authority to deny a grain producer's claim because of the grain producer's failure to pay assessments by specifying a grain producer's failure to pay assessments for the current growing season. The bill specifies that the subrogation of the board for a claim paid against a grain buyer to all rights of the grain producer against any applicable entity, in addition to the grain buyer, is to the extent of the amount paid to the grain producer by the board. The bill authorizes the board to purchase reinsurance policies to mitigate the board's financial risks. The bill defines "reinsurance" as an insurance product purchased by the board to reduce the financial risk and capital balance associated with the function of the board.

S.B. 1099 includes the adoption of rules relating to the orderly distribution of refunds and the use of insurance and reinsurance products within the board's general rulemaking authority. The bill removes the requirement that approval of a referendum of grain producers to determine the maximum assessment amount be either by at least a two-thirds majority of those voting in favor of the referendum or by a favorable vote of those voters who produced at least 50 percent of the volume of production of the commodity during the relevant production period and instead requires a majority of votes cast in favor of the referendum.

S.B. 1099 repeals provisions providing for a refund of assessments for a grain producer who files an application with the board that is 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 board's indemnification protection. The bill instead establishes that a grain producer who has paid an assessment may be eligible for a refund from excess money in the indemnity fund. The bill requires the board, as a part of the annual budget proposal procedure, to review the budget for the next year and the board's current financial status. The bill requires the board to determine, based on the review, whether funds are available in excess of the minimum fund balance to issue refunds to grain producers who paid an assessment. The bill 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.

S.B. 1099 requires the board by rule to establish an administrative review process to informally review and resolve claims arising from an action of the board. The bill requires the board to adopt rules designating which board actions are subject to review and outlining available remedial actions. The bill authorizes a person to appeal an administrative review decision made by the board to the commissioner and to appeal a decision of the commissioner in the manner provided for a contested case under the Administrative Procedure Act. The bill establishes that these provisions relating to administrative review do not waive the state's sovereign immunity.

S.B. 1099 adds the board's governing provisions to the commodity producers boards provisions of which a violation is grounds for suspension or revocation of any license or permit issued by the commissioner.

S.B. 1099 repeals Section 41.214, Agriculture Code.

#### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2015.