

BILL ANALYSIS

C.S.H.B. 2504
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Agriculture & Livestock
Committee Report (Substituted)

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. C.S.H.B. 2504 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

C.S.H.B. 2504 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.

C.S.H.B. 2504 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.

C.S.H.B. 2504 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.

C.S.H.B. 2504 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.

C.S.H.B. 2504 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.

C.S.H.B. 2504 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.

C.S.H.B. 2504 repeals Section 41.214, Agriculture Code.

EFFECTIVE DATE

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

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2504 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 41.102, Agriculture Code, is amended.

SECTION 2. Section 41.201, Agriculture Code, is amended.

SECTION 3. Subchapter I, Chapter 41, Agriculture Code, is amended by adding Section 41.2035 to read as follows:

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

(b) The board shall deposit assessments remitted under Section 41.206 in the fund.

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

(d) Not later than December 1 of each year, subject to the approval of the commissioner, the board shall 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 board shall post the minimum balance set under this subsection on the board's Internet website.

SECTION 4. The heading to Section 41.205, Agriculture Code, is amended.

SECTION 5. Section 41.205, Agriculture Code, is amended.

No equivalent provision.

SECTION 6. Sections 41.209(b) and (f), Agriculture Code, are amended to read as follows:

(b) In determining the amount due to a

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as introduced version.

SECTION 2. Same as introduced version.

SECTION 3. Subchapter I, Chapter 41, Agriculture Code, is amended by adding Section 41.2035 to read as follows:

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

(b) The board shall deposit assessments remitted under Section 41.206 in the fund.

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

(d) As a part of the annual budget proposal procedure described by Section 41.059, the board shall 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 board shall post the minimum balance set under this subsection on the board's Internet website.

SECTION 4. Same as introduced version.

SECTION 5. Same as introduced version.

SECTION 6. Section 41.206(a), Agriculture Code, is amended to read as follows:

(a) Except as provided by this subsection, a grain buyer shall collect assessments in the manner prescribed for processors under Section 41.081. The assessment shall be collected at the first point of sale. Section 41.081(b) does not apply to the collection of assessments under this section.

SECTION 7. Sections 41.209(b) and (f), Agriculture Code, are amended to read as follows:

(b) In determining the amount due to a

grain producer under Subsection (a) for a loss of grain, the board may award the grain producer **not more than 85** ~~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) The board may deny a grain producer's claim in whole or in part:

(1) if the grain producer has failed to pay assessments ~~[for the current growing season]~~ 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.

SECTION 7. Section 41.210, Agriculture Code, is amended.

SECTION 8. Section 41.211, Agriculture Code, is amended to read as follows:

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

(1) notice and collection of assessments;

(2) distribution of rebates;

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

(4) the use of insurance and reinsurance products;

grain producer under Subsection (a) for a loss of grain, the board may award the grain producer **85** ~~[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) The board may deny a grain producer's claim in whole or in part:

(1) if the grain producer has failed to pay assessments ~~[for the current growing season]~~ 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.

SECTION 8. Same as introduced version.

SECTION 9. Section 41.211, Agriculture Code, is amended to read as follows:

Sec. 41.211. RULES. Except as provided by Section 41.212, the board may 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) [(3)] administration of the board's duties;
(6) [(4)] the statewide referendum conducted under Section 41.212;
(7) [(5)] the selection of agents, designees, or devices to carry out the intent of the board; and
(8) [(6)] guidelines for industry practices that do or do not qualify for indemnification by the board.

SECTION 9. Section 41.212(e), Agriculture Code, is amended.

SECTION 10. Subchapter I, Chapter 41, Agriculture Code, is amended by adding Section 41.2145 to read as follows:

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

(b) Not later than December 1 of each year, the board shall review the budget for the next year and the board's current financial status. Based on that review, the board shall determine whether funds are available in excess of the minimum fund balance to issue rebates to grain producers who paid an assessment under Section 41.206.

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

SECTION 11. Subchapter I, Chapter 41, Agriculture Code, is amended.

SECTION 12. Section 41.214, Agriculture Code, is repealed.

SECTION 13. (a) The change in law made by this Act to Section 41.102, Agriculture Code, applies only to conduct that occurs on or after the effective date of this Act. Conduct that occurs before the effective date of this Act is governed by the law in effect on the date the conduct occurs, and the former law is continued in effect for that purpose.

(b) The repeal of Section 41.214,

(5) [(3)] administration of the board's duties;
(6) [(4)] the statewide referendum conducted under Section 41.212;
(7) [(5)] the selection of agents, designees, or devices to carry out the intent of the board; and
(8) [(6)] guidelines for industry practices that do or do not qualify for indemnification by the board.

SECTION 10. Same as introduced version.

SECTION 11. Subchapter I, Chapter 41, Agriculture Code, is amended by adding Section 41.2145 to read as follows:

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

(b) As a part of the annual budget proposal procedure described by Section 41.059, the board shall review the budget for the next year and the board's current financial status. Based on that review, the board shall 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) The board shall 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. Same as introduced version.

SECTION 13. Same as introduced version.

SECTION 14. Same as introduced version.

Agriculture Code, by this Act applies only to an application for a refund submitted on or after the effective date of this Act. An application for a refund submitted before the effective date of this Act is governed by the law in effect on the date the application was submitted, and the former law is continued in effect for that purpose.

SECTION 14. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2015.

SECTION 15. Same as introduced version.