

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 1580
By: Flynn et al. (Hegar)
Government Organization
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Boll Weevil Eradication Foundation (foundation) is primarily a grower-initiated and grower-funded effort created to eradicate the boll weevil and pink bollworm from Texas cotton fields. The foundation's main functions include mapping cotton fields, setting and monitoring boll weevil traps, and arranging for aerial pesticide applications in areas of boll weevil infestation. All active cotton-growing areas in Texas voluntarily participate in the foundation's boll weevil eradication efforts.

The foundation is a quasi-governmental entity with oversight from the commissioner of agriculture (commissioner). Its employees are not state employees, and its budget is not subject to the legislative appropriations process. In 2008, the foundation operated on a budget of about \$58 million, comprising assessments from nearly 26,000 growers, federal funding, and state funding. The foundation also has an accumulated statewide debt of \$99 million in low-interest loans from the Farm Service Agency.

The foundation is subject to the Texas Sunset Act and will be abolished on September 1, 2009, unless continued by the legislature. A review by the Texas Sunset Advisory Commission found that the foundation's current structure promotes meaningful participation by cotton growers and encourages a cooperative, self-policing attitude that makes the program more proactive than traditional regulatory approaches. However, inflexible methods and mechanisms for collecting and using grower assessments may affect the foundation's ability to successfully complete its mission of eradicating the boll weevil.

C.S.H.B. 1580 amends current law relating to the continuation and functions of the board of directors of the official cotton growers' boll weevil eradication foundation and the management of certain cotton in pest management zones.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of agriculture in SECTION 5 (Section 74.1135, Agriculture Code) of this bill.

Rulemaking authority is expressly granted to the Texas Department of Agriculture in SECTION 2 (Section 74.0032, Agriculture Code) and SECTION 7 (Section 74.119, Agriculture Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 74.001, Agriculture Code, as follows:

Sec. 74.001. PUBLIC NUISANCE. (a) Creates this subsection from existing text. Makes no changes to this subsection.

(b) Provides that the legislature finds that volunteer and other noncommercial cotton is a public nuisance that threatens the cotton growers' boll weevil eradication program by serving as a host for cotton pests such as boll weevils and pink bollworms. Requires that volunteer and other noncommercial cotton, to protect the cotton industry of this state, be eliminated subject to the provisions of this chapter.

SECTION 2. Amends Subchapter A, Chapter 74, Agriculture Code, by adding Sections 74.0031 and 74.0032, as follows:

Sec. 74.0031. COTTON STALK DESTRUCTION. (a) Requires the Department of Agriculture (TDA) to submit the recommendations of each administrative committee that governs a pest management zone under Section 74.003 (Establishment of Pest Management Zones) to the Texas Boll Weevil Eradication Foundation (foundation). Requires the foundation, on review of the administrative committee recommendations, to submit to TDA an estimate of the amount by which the implementation of each recommendation would increase the cost of administering the boll weevil eradication program.

(b) Requires the foundation to conduct a study of the effects of incomplete cotton stalk destruction and volunteer cotton control on boll weevil eradication activities and submit annual recommendations to TDA and the foundation's board of directors (board) for a cotton stalk destruction deadline for each pest management zone.

(c) Authorizes the foundation to consult with its technical advisory committee in fulfilling its duties under Subsection (b).

(d) Requires TDA to set a cotton stalk destruction deadline for each pest management zone, with consideration given to the recommendations of the foundation and the applicable administrative committee submitted under Subsection (b).

Sec. 74.0032. HOSTABLE COTTON FEE. (a) Requires TDA to establish a hostable cotton fee for fields in which hostable cotton stalks, hostable volunteer cotton, or other hostable noncommercial cotton remains past the stalk destruction deadline set for the applicable pest management zone under Section 74.0031. Requires that a fee under this section be expressed in terms of dollars per acre, per week in which the stalks, volunteer cotton, or other noncommercial cotton remains in the field. Requires TDA to establish a procedure to notify a cotton grower that a fee is due TDA under this section.

(b) Authorizes the administrative committee that governs the applicable pest management zone, if adverse weather conditions or other good cause exists, to request that TDA grant an extension of the cotton stalk destruction deadline for any specified part of the pest management zone or for the entire pest management zone. Requires that a request under this subsection be made not later than 10 business days before the applicable cotton stalk destruction deadline. Provides that a field is not subject to a hostable cotton fee if TDA grants an extension of the deadline. Requires the foundation to submit to TDA an estimate of the amount by which an extension under this subsection will increase the cost of administering the boll weevil eradication program.

(c) Authorizes a cotton grower, if the applicable administrative committee does not request an extension, or if TDA denies a request for an extension of the cotton stalk destruction deadline for a specified part of a pest management zone, to apply for an individual extension of the deadline. Requires that a request under this section be made not later than 10 business days before the applicable pest management zone's stalk destruction deadline.

(d) Requires the foundation to submit to TDA an estimate of the amount by which any extension of a stalk destruction deadline that is granted under Subsection (c) will increase the cost of administering the boll weevil eradication program.

(e) Provides that any hostable cotton or hostable cotton stalks that remain in a field after the cotton stalk destruction deadline or any extension of the stalk destruction deadline has passed are subject to the hostable cotton fee established under Subsection (a). Provides that any hostable cotton or hostable cotton stalks that remain in a field for more than 30 days after the stalk destruction deadline or

any extension of the deadline are subject to 150 percent of the hostable cotton fee established under Subsection (a).

(f) Requires that a hostable cotton fee be sent to the comptroller of public accounts (comptroller) and authorizes it to be appropriated only for the purpose of treating hostable cotton or for other expenses related to boll weevil eradication. Authorizes TDA to contract with the foundation or its successor entity for the treatment, control, or monitoring activities funded from the account.

(g) Authorizes TDA, unless on or before the 45th day after the date TDA gives notice to a cotton grower that a hostable cotton fee is due the fee is paid, to destroy any cotton or cotton stalks that remain in the field, as provided by Section 74.004 (Destruction of Host Plants).

(h) Requires TDA to adopt rules to administer this section.

SECTION 3. Amends Section 74.102(5), Agriculture Code, to redefine "cotton grower."

SECTION 4. Amends Section 74.113, Agriculture Code, by amending Subsection (f) and adding Subsection (1), as follows:

(f) Authorizes an assessment levied on cotton growers in an eradication zone to be applied only to eradication; the foundation operating costs, including payments on debt incurred for a foundation activity; and the conducting of other programs consistent with the declaration of policy stated in Section 74.101 (Findings and Declaration of Policy). Deletes existing text that authorizes an assessment levied on cotton growers in an eradication zone to be applied only to eradication in that zone, the foundation's operating costs, including payments on debt incurred for a foundation activity, except that the funds of one zone are prohibited from being used to pay another zone's bank loans or debts.

(1) Authorizes the foundation, with approval of the board and the commissioner of agriculture (commissioner), to transfer the proceeds from the collection of assessments in one eradication zone to another eradication zone. Requires the board to consult with affected cotton grower steering committees before recommending that the commissioner approve the transfer of proceeds under this subsection. Authorizes the transferred proceeds to be applied only as provided by Subsection (f).

SECTION 5. Amends Subchapter D, Chapter 74, Agriculture Code, by adding Section 74.1135, as follows:

Sec. 74.1135. ALTERNATIVE METHOD OF ASSESSMENTS. (a) Authorizes the commissioner to adopt rules that provide for an alternative method, manner, and mechanism by which assessments are imposed and collected under this subchapter. Authorizes the commissioner to adopt the rules only after receiving a recommendation from the board. Requires the board to consult with cotton grower steering committees and the technical advisory committee in formulating a recommendation to the commissioner under this subsection. Authorizes the commissioner to accept, reject, or modify a board recommendation. Provides that the rules apply notwithstanding Section 74.113. Requires that the rules require any person collecting an assessment to forward the assessment to the foundation.

(b) Prohibits the maximum amount of an assessment under this section from exceeding the maximum amount of an assessment approved in an assessment referendum under this subchapter.

SECTION 6. Amends Section 74.118(a), Agriculture Code, to authorize the commissioner to adopt reasonable rules regarding areas where cotton is prohibited from being planted in an eradication zone if there is reason to believe planting will jeopardize the success of the program by making treatment impracticable or present a hazard to public health or safety.

SECTION 7. Amends Section 74.119, Agriculture Code, as follows:

Sec. 74.119. AUTHORITY FOR DESTRUCTION OR TREATMENT OF COTTON IN ERADICATION ZONES; COMPENSATION PAYABLE. (a) Creates this subsection from existing text. Requires, rather than authorizes, TDA to destroy or treat hostable volunteer or other hostable noncommercial cotton and establish procedures for the purchase and destruction of commercial cotton in eradication zones, rather than establish procedures for the purchase and destruction of commercial cotton in eradication zones if TDA determines the action is necessary to carry out the purpose of this subchapter.

(b) Requires TDA, not later than January 1, 2010, to adopt rules providing for the regulation and control of volunteer and other noncommercial cotton in pest management zones. Requires that the rules, at a minimum:

(1) provide a grower or landowner with a period of time in which the grower or owner is required to destroy hostable volunteer or other hostable noncommercial cotton on receipt of a notice from TDA; and

(2) allow TDA or a person designated by TDA to monitor and treat hostable volunteer or other hostable noncommercial cotton that is located in a crop field for boll weevil infestation if the grower or landowner does not destroy the cotton in compliance with the notice from TDA and to destroy hostable volunteer or other hostable noncommercial cotton that is not a crop field, as provided by Section 74.004.

(c) Requires the grower or owner, if a grower or landowner does not destroy hostable volunteer or other noncommercial cotton as required by Subsection (b)(1), to pay to TDA a volunteer cotton fee in an amount determined by TDA. Provides that a fee under this subsection may be assessed only on acreage where hostable volunteer or other noncommercial cotton is located; may not be less than one-half the amount the grower or owner would owe if the entire acreage were planted with cotton; and is required to be deposited to the credit of the hostable cotton fee account established by Section 74.0032.

SECTION 8. Amends Section 74.127(a), Agriculture Code, to provide that, unless continued in existence as provided by Chapter 325 (Texas Sunset Act), Government Code, the board is abolished and this subchapter expires September 1, 2021, rather than September 1, 2009.

SECTION 9. Effective date: upon passage or September 1, 2009.