

On page 1, line 13 of CSHB 7 (Senate committee report) add the following Article.

ARTICLE _____. PROMOTION PARTNERSHIP BETWEEN THE
TEXAS DEPARTMENT OF AGRICULTURE AND
CERTAIN COMMODITY PRODUCERS BOARDS

SECTION _____.1. Sec. 12.0176, Agriculture Code, is amended to read as follows:

Sec. 12.0176 Cooperation with Certain Commodity Producers Boards. Upon activation of a commodity producers board under Ch. 41 of this Code, the department may as resources allow enter into cooperative agreements with one or more of the boards in order to increase the effectiveness and efficiency of the promotion of Texas agricultural products. Such cooperative agreements may include provisions relating to the programs instituted by the department under Chs. 12 and 46 of this Code, provisions relating to board contributions for promotional costs, and any other provisions the department and the board deem appropriate. Funds contributed by a board pursuant to an agreement under this section are not state funds.

SECTION _____.2. Sec. 41.002(1), Agriculture Code, is amended to read as follows:

(1) "Agricultural commodity" means an agricultural, horticultural, viticulture, or vegetable product, bees and honey, planting seed, rice, livestock or livestock product, or poultry or poultry product, produced in this state, either in its natural state or as processed by the producer. The term does not include flax. ~~[or cattle.]~~

SECTION _____.3. Subchapter H, Agriculture Code, is added to read as follows:

SUBCHAPTER H. TEXAS BEEF MARKETING, EDUCATION,
RESEARCH AND PROMOTION

SECTION _____.4. Sec. 41.30, Agriculture Code, is added to read as follows:

Sec. 41.30, Findings and Declaration of Policy

(a) It is hereby found and declared that:

(1) beef and beef products are basic foods that are a valuable part of the human diet;

(2) the production of beef and beef products plays a significant role in the state economy, beef and beef products are produced by thousands of Texas cattle producers and processed by numerous processing entities in the state, and beef and beef products are consumed by millions of people throughout the United States and foreign countries;

(3) beef and beef products should be readily available and marketed efficiently to ensure that the people of the state receive adequate nourishment;

(4) the maintenance and expansion of existing markets for cattle and beef products are vital to the welfare of cattle producers and those concerned with marketing, using, and producing beef products, as well as to the general economy of the state;

(5) there exists an established state organization conducting beef promotion, research, and consumer education programs that are invaluable to the efforts of promoting the consumption of beef and beef products.

(6) the department currently oversees the administration of boards established under the Texas Commodity Referendum Law, Agriculture Code, Ch. 41, and is the appropriate entity to provide oversight to a board established under this subchapter

(b) It is the intent of the Legislature that the promotion, marketing, research and educational efforts concerning beef and beef products carried out under this Subchapter utilize existing cattle industry infrastructure to the extent possible.

(c) The Department may recover costs for administration of this subchapter.

SECTION _____.5. Sec. 41.31, Agriculture Code, is added to read as follows:

Sec. 41.31, Conflict with General Commodity Law Provisions. To the extent that the provisions of this subchapter conflict with other provisions of this chapter, the provisions of this subchapter shall prevail.

SECTION _____.6. Sec. 41.32, Agriculture Code, is added to read as follows:

Sec. 41.32, Designation of Entity to Carry Out Beef

Marketing, Education, Research and Promotion:

(a) The Texas Beef Council, Inc, a Texas non-profit corporation chartered by the Secretary of State on March 7, 1986, shall be recognized as the entity to plan, carry out and operate programs of research, education, promotion and marketing programs, including providing consumer information and industry information relating to beef and beef products in this state under the supervision of the Department as provided by this subchapter.

(b) Members of the board serve without compensation but are entitled to reimbursement for reasonable and necessary expenses incurred in the discharge of their duties.

SECTION _____.7. Sec. 41.33, Agriculture Code, is added to read as follows:

Sec. 41.33 Definitions

In this subchapter:

(1) "beef" means flesh of cattle.

(2) "beef products" means products produced in whole or in part from beef, exclusive of milk and products made there from.

(3) "board" means the Board of Directors of the Texas Beef Council, Inc.

(4) "cattle" means live domesticated bovine animals regardless of age.

(5) "consumer information" means nutritional data and other information that will assist consumers and other persons in making evaluations and decisions regarding the purchasing, preparing and use of beef and beef products.

(6) "council" means the Texas Beef Council, Inc.

(7) "department" means the Texas Department of Agriculture.

(8) "commissioner" means the Commissioner of Agriculture.

(9) "industry information" means information and programs that will lead to the development of new markets, marketing strategies, increased efficiency, and activities to enhance the image of the cattle industry, beef and beef products.

(10) "person" means any individual, group of

individuals, partnership, corporation, association, cooperative or any other entity.

(11) "producer" means any person who owns or acquires ownership of cattle except that a person shall not be considered to be a producer if the person's only share in the proceeds of a sale of cattle or beef is a sales commission, handling fee, or other service fee.

(12) "promotion" means any action including paid advertising to advance the image and desirability of beef and beef products with the express intent of improving the competitive position and stimulating sales of beef and beef products in the market place.

(13) "research" means studies testing the effectiveness of market development and promotion efforts, studies relating to the nutritional value of beef and beef products, other related food science research, and new product development.

SECTION _____.8. Sec. 41.34, Agriculture Code, is added to read as follows:

Sec. 41.34 Powers of Council and Commissioner

(a) The council may:

(1) conduct programs consistent with the declaration of policy stated in Section 41.30;

(2) the council may accept gifts, donations, and grants of money, including appropriated funds, from state government, federal government, local governments, private corporations, or other persons, to be used for the purposes of this subchapter;

(3) borrow money with the approval of the commissioner as necessary to execute this chapter;

(4) take other action and exercise other authority as necessary to execute any act authorized by this subchapter or the Texas Nonprofit Corporation Act (Article 1396-101 et. seq. Vernon's Texas Civil Statutes; and

(5) form advisory committees composed of individuals from this state, other states or other countries and change membership on the committees as necessary.

(b) The commissioner and the State Auditor at any time may

inspect the books and other financial records of the council.

SECTION _____.9. Sec. 41.35, Agriculture Code, is added to read as follows:

Sec. 41.35 Council Duties

(a) The council shall have an annual independent audit of the books, records of account and minutes of proceedings maintained by the council prepared by an independent certified public accountant or firm of independent certified public accountants. The audit shall be filed with the council, the commissioner and the state auditor and shall be made available to the public by the council or the commissioner. The state auditor may examine any work papers from the independent audit or may audit the transactions of the council if the state auditor determines that an additional audit is necessary.

(b) Not later than the sixtieth day after the last day of the fiscal year the council shall submit to the commissioner a report itemizing all income and expenditures and describing all activities of the council during the preceding fiscal year.

(c) The council shall provide fidelity bonds in amounts determined by the council for employees or agents who handle funds for the council.

(d) The council and the board are state agencies for the following purposes only:

(1) exemption from taxation including exemption from sales and use taxes, vehicle registration fees, and taxes under Chapter 152 Tax Code; and

(2) indemnification under Chapter 104 Civil Practice & Remedies Code.

(e) Funds collected by the council are not state funds and are not required to be deposited in the state treasury. The council shall deposit all money collected under this subchapter in a bank or other depository approved by the commissioner.

(f) The council is a governmental unit under Section 101.001, Civil Practice & Remedies Code and is entitled to governmental immunity. A tort claim against the council must be made under Chapter 101 Civil Practice & Remedies Code.

(g) All revenue collected under this subchapter shall be

used solely to finance programs approved by the council and commissioner as consistent with this subchapter.

(h) A board member may not vote on any matter in which the member has a direct pecuniary interest.

SECTION _____.10. Sec. 41.36, Agriculture Code, is added to read as follows:

Sec. 41.36 Council Composition

(a) The board shall be composed of members appointed by the commissioner under Subsection (b) of this section. The commissioner shall appoint an initial board composed of 21 members.

(b) In making appointments under this section, the commissioner shall appoint the following board members, selected from a variety of cattle-raising regions of the state, for a one year term:

(1) three (3) representatives of the Texas and Southwestern Cattle Raisers Association;

(2) three (3) representatives of the Texas Cattle Feeders Association;

(3) three (3) representatives of the Texas Farm Bureau;

(4) two (2) representatives of the Independent Cattlemen's Association;

(5) two (2) representatives of Texas purebred cattle associations, as a group;

(6) two (2) representatives of Texas dairy associations, as a group;

(7) two (2) representatives of Livestock Marketing Association of Texas;

(8) one (1) representative of meat packer/exporter associations, as a group;

(9) one (1) representative of Texas Cattle Women; and

(10) two (2) at-large directors.

(c) A vacancy on the board shall be filled by appointment by the commissioner for the unexpired term.

SECTION _____.11. Sec. 41.37, Agriculture Code, is added to read as follows:

Sec. 41.37 Beef Promotion Referendum

(a) The commissioner shall conduct a statewide referendum to determine whether cattle producers desire to establish a state beef marketing, education, research, and promotion program. The initial referendum to establish a state beef promotion program shall be held concurrently with a referendum to establish a maximum assessment to be levied on cattle producers to fund the state program.

(b) Such referendum shall be conducted under the procedures provided by Section 41.39 of this Code.

(c) A referendum ballot must include or be accompanied by information about the proposed state program and proposed assessment including:

(1) a statement of the purpose of the program;

(2) the maximum assessment to be collected under the program and a description of the manner in which the assessment is to be collected and the proceeds administered and used;

(3) a general summary of rules adopted by the commissioner under this subchapter, including a description of:

(A) cattle producer responsibility;

(B) penalties for noncompliance with the rules adopted under this subchapter and penalties for noncompliance with the statutory provisions of this subchapter; and

(C) an address and toll free telephone number that a cattle producer may use to request more information about the referendum or the program.

(d) The commissioner shall establish, by rule, requirements for providing notice of the referendum to cattle producers.

SECTION _____.12. Sec. 41.38, Agriculture Code, is added to read as follows:

Sec. 41.38 Establishment and Collection of Assessment.

(a) The commissioner, on the recommendation of the council, shall propose the maximum assessment needed to ensure the stability of the cattle industry by providing adequate funds for marketing, education, research and promotion of beef and beef products and shall propose the maximum assessment in a referendum as provided in Sec. 41.37 of this subchapter.

(b) On the recommendation of the council and with the

commissioner's approval, the council may set the assessment at a level less than the maximum assessment approved by the referendum.

(c) If an assessment referendum is approved, the council may collect the assessment.

(d) An assessment levied on cattle producers may be applied to efforts relating to the marketing, education, research and promotion of beef and beef products in Texas, the United States and international markets.

(e) Prior to operations each year the commissioner shall review and approve the council's operating budget.

SECTION ____ .13. Sec. 41.39, Agriculture Code, is added to read as follows:

Sec. 41.39 Conduct of Referendum; Balloting

(a) On the recommendation of the Council, the commissioner shall conduct a referendum authorized under this subchapter. Persons qualified to vote in a referendum are those producers who have owned cattle within 12 months preceding the referendum.

(b) The council shall bear all expenses incurred in conducting a referendum.

(c) The commissioner shall adopt rules for voting in a referendum.

(d) An eligible cattle producer may vote only once in a referendum.

(e) Each vote is entitled to equal weight regardless of the volume of production.

(f) Ballots in a referendum shall be mailed directly to a central location, to be determined by the commissioner. A cattle producer eligible to vote in a referendum who has not received a ballot from the commissioner, council or another source, shall be offered the option of requesting a ballot by mail or obtaining a ballot at the office of the county agent of the Texas Cooperative Extension or a government office distributing ballots in a county where the referendum is conducted.

(g) A referendum is approved if a simple majority of those voting vote in favor of the referendum.

(h) If a referendum under this subchapter is not approved, the commissioner may conduct another referendum. A referendum

under this subsection cannot be held before one year after the date on which the last referendum on the same issue was held.

(i) A public hearing regarding the proposed program, including information regarding regulations to be promulgated by the commissioner may be held by the commissioner in each of several locations within the state.

(j) Individual voter information, including an individual's vote in a referendum conducted under this section, is confidential and not subject to disclosure under the Open Records law, Chapter 552 Government Code.

SECTION _____.14. Sec. 41.40, Agriculture Code, is added to read as follows:

Sec. 41.40 Authority to Adopt Rules

The commissioner may adopt rules as necessary to implement the provisions of this subchapter.

SECTION _____.15. Sec. 41.41, Agriculture Code, is added to read as follows:

Sec. 41.41 Penalties

(a) A person who violates this subchapter or a rule adopted under this subchapter commits an offense.

(b) An offense under this section is a Class C misdemeanor.

(c) If the commissioner determines that a violation of this subchapter or a rule adopted under this subchapter has occurred, the commissioner may request that the Attorney General or the county or district attorney of the county in which the alleged violation occurred or is occurring file suit for civil injunctive and/or appropriate relief.

(d) Failure to remit assessment.

(1) The council may investigate conditions that relate to the prompt remittance of the assessment by any producer or processor. If the council has probably cause to believe that a person has failed to collect an assessment or failed to remit to the council an assessment as required by this chapter, the council may:

(a) independently institute proceedings for recovery of the amount due to the board or for injunctive or other appropriate relief;

(b) request the attorney general, or the county

or district attorney having jurisdiction, or both, to institute proceedings in the board's behalf; or

(c) forward to the department for action under Section 41.1011 a complaint and any original evidence or other information establishing probable cause.

(2) Suit under this section may be brought in Travis County or a county in which the person who is alleged to have failed to collect or remit an assessment conducts business related to the commodity subject to the uncollected or unpaid assessment.

(3) The remedies provided by this section are cumulative of other remedies provided by law.

SECTION _____.16. Sec. 41.42, Agriculture Code, is added to read as follows:

Sec. 41.42 Annual Report

The council shall issue to the commissioner and the appropriate oversight committee in the Senate and House of Representatives an annual report detailing its efforts to carry out the purposes of this subchapter.

SECTION _____.17. Sec. 41.43, Agriculture Code, is added to read as follows:

Sec. 41.43 Exemption from Lawsuits, Liability, Taxation and Legal Process

The Legislature recognizes that the council, acting under the supervision and control of the commissioner, is carrying out an important governmental function and that therefore, the council, as a quasi-governmental entity, must be immune from lawsuits and liability except to the extent provided in Chapter 101, Civil Practices & Remedies Code and as provided by this section. Therefore, no claims may be brought or continued against the council except claims allowed by Chapter 101, Civil Practice & Remedies Code. With the exception of finally adjudicating claims arising from Chapter 101, Civil Practice & Remedies Code, all payments, contributions, funds and assessments received or held by the council under this subchapter are exempt from garnishment, attachment, execution or other seizure and from state and local taxation, levies, sales and other process and are unassignable.

SECTION _____.18. Sec. 41.44, Agriculture Code, is added to

read as follows:

Sec. 41.44 Producer Refunds

(a) Assessments collected by the council under this subchapter are subject to Section 41.083 of this Code.

Renumber subsequent Articles appropriately.