

## **BILL ANALYSIS**

C.S.H.B. 4578  
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Agriculture & Livestock  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The Texas citrus industry has a \$159 million economic impact on our state's economy. Recent outbreaks of citrus canker in Florida, eradicated in Texas in 1943, make Texas citrus producers nervous that a similar outbreak could occur in Texas as well. Another serious disease, citrus greening, would devastate the Texas citrus industry if an outbreak were to occur. The Florida citrus industry is already in a crisis due to the outbreak of this disease, where it has destroyed more than 100,000 acres of citrus trees. The Florida crisis was exacerbated because the Florida Agriculture Department did not have the legal authority to respond to such an outbreak. There have not been any infestations of greening in Texas, but the presence of the vector makes producers very concerned.

A citrus greening task force appointed by the commissioner of agriculture has recommended that citrus producers seek to establish an entity and administrative mechanism for managing this disease if and when it appears in Texas citrus growing areas. The bill would allow growers to vote to establish pest management zones and pay self-assessed fees for the cost of this management and suppression through a nonprofit corporation.

The grower-administered, self-funded entity established through the bill will give the industry the tools to work closely with the Texas Department of Agriculture and scientific experts to develop a plan of attack to suppress the spread of citrus greening in the state. Upon petition by producers, TDA would administer an election among all of the citrus producers in each pest management zone as to whether to create a zone, to assess funds, and to elect directors for each particular zone.

After electing board members and establishing a zone, all citrus producers in a zone would be required to participate in the suppression program, as the most effective means of controlling the spread of disease is to ensure that all groves are properly treated.

Certified organic citrus groves would be exempt from the use of chemicals, and the commissioner would be required to ensure a proper program was put in place to suppress the insect in those groves without jeopardizing growers' organic certification.

C.S.H.B. 4578 creates the Texas Citrus Pest and Disease Management Corporation, Inc., acting under the supervision and control of the commissioner of agriculture, to oversee citrus pest and disease management and control.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the commissioner of agriculture in SECTION 1 of this bill.

## ANALYSIS

C.S.H.B. 4578 amends the Agriculture Code to provide for the establishment of the Texas Citrus Pest and Disease Management Corporation, Inc., a nonprofit corporation. The bill sets forth legislative findings and a legislative declaration of policy regarding the insect known as the Asian citrus psyllid and the disease with which it is associated. The bill establishes legislative intent that the program of control and suppression of the Asian citrus psyllid be carried out with the best available integrated pest management techniques. The bill requires the Texas Department of Agriculture (TDA) to recognize the corporation as the entity to plan, carry out, and operate suppression programs under TDA supervision. The bill authorizes the commissioner of agriculture to terminate that designation and to designate a successor entity.

C.S.H.B. 4578 defines "Asian citrus psyllid" to mean *Diaphorina citri* Kuwayama. The bill defines "citrus greening" to mean the disease caused by the Asian citrus psyllid. The bill defines "citrus" to mean citrus products, a citrus plant, or a part of a citrus plant including trees, limbs, flowers, roots, and leaves. The bill defines "citrus producer" to mean a person who grows citrus and receives income from the sale of citrus. The bill specifies that the term includes an individual who as owner, landlord, tenant, or sharecropper is entitled to share in the citrus grown and available for marketing from a farm or to share in the proceeds from the sale of the citrus from the farm. The bill defines "regulated article" to mean an article carrying or capable of carrying the Asian citrus psyllid, including citrus plants, nursery plants, citrus rootstock, or other hosts. The bill defines "board," "commissioner," "suppression," "pest management zone," "corporation," "host," "infested," and "integrated pest management."

C.S.H.B. 4578 authorizes the commissioner of agriculture by rule to designate an area of the state as a proposed pest management zone. The bill authorizes the commissioner to hold a public hearing in the proposed zone to discuss the proposed geographic boundaries of the zone. The bill requires the commissioner, after rule adoption, to conduct a referendum in each proposed zone to determine whether citrus producers want to establish a zone. The bill requires an initial election for members of the corporation's board to be held concurrently with the referendum. The bill provides that a citrus producer who is eligible to vote in the referendum or election is eligible to be a candidate for and member of the board if the person has at least seven years of experience as a citrus producer and otherwise meets the qualifications for the office. The bill requires the commissioner to adopt rules for voting in board elections and referenda to establish pest management zones. The bill specifies provisions that must be included in such rules. The bill establishes other requirements relating to elections and referenda.

C.S.H.B. 4578 provides that the board of the corporation is composed of members elected from each pest management zone established by referendum, members appointed by the commissioner from other citrus-growing areas of the state, and other members appointed by the commissioner, likewise selected from a variety of citrus-growing regions and including an agricultural lender, an independent entomologist who is an integrated pest management specialist, two representatives from industries allied with citrus production, and a representative from the pest control industry. The bill requires the commissioner to appoint an initial board composed of 15 members, but authorizes the commissioner to change the number of board positions or the pest management zone representation on the board to accommodate changes in the number of pest management zones. The bill includes provisions relating to such changes, to the filling of vacancies, and the replacement of an unelected board member on notice and with opportunity for hearing.

C.S.H.B. 4578 requires the commissioner to propose the assessment needed in each pest management zone to ensure the stability of the citrus industry by suppressing the public nuisance caused by the Asian citrus psyllid. The bill requires the commissioner to propose in a referendum the maximum assessment to be paid by citrus producers having production in the pest management zone and the time for which the assessment will be made. The bill requires the assessment to be adequate and necessary to achieve the goals of the legislation. The bill requires

the assessment amount to be determined by criteria established by the commissioner including the extent of infestation, the amount of acreage planted, historical suppression efforts, the growing season, epidemiology, historical weather conditions, and the costs and financing of the program. The bill requires the commissioner to conduct an assessment referendum, and requires the commissioner to give notice of and hold a public hearing in a pest management zone regarding the proposed assessment referendum. The bill establishes other actions that the commissioner must take before the referendum. The bill provides that if an assessment referendum is approved, the corporation may collect the assessment. The bill provides that an assessment levied on citrus producers in a pest management zone may be applied only to pest control in that zone, the corporation's operating costs with the qualification that the funds of one zone may not be used to pay another zone's bank loans or debts, and the conducting of other programs consistent with the legislature's declaration of policy. The bill authorizes the corporation, with the commissioner's approval, to make an assessment in a pest management zone at a level less than the assessment approved by the referendum. The bill requires the commissioner on a zone-by-zone basis to set the date on which assessments are due and payable, and requires the commissioner each year to review and approve the corporation's operating budget. The bill establishes requirements relating to the billing by the corporation of citrus producers subject to the assessment.

C.S.H.B. 4578 provides that a referendum under the bill is approved if at least two-thirds of those voting in the referendum vote in favor, or if those voting in favor cultivate more than 50 percent, as determined by the commissioner, of the citrus acreage in the relevant pest management zone. The bill requires eligible voters, by subsequent referenda after the approval of a referendum, to be allowed to vote on whether to continue their assessments, and applies to a subsequent referendum the same requirements as for the initial one. The bill provides that if a referendum to establish a pest management zone is defeated, the concurrent election of a board member from the proposed zone has no effect, and the commissioner is required to appoint a representative to the board from the area. The bill authorizes the commissioner, if a referendum to establish a zone or approve an assessment is defeated, to conduct another referendum, but not before the first anniversary of the date on which the previous referendum on the same issue was held. The bill provides also, with respect to a referendum to create a pest management zone, that the corporation may request the commissioner to call additional referenda in a proposed zone in which a referendum has not been approved, but similarly prohibits holding an additional referendum and concurrent board election before the first anniversary of the date of the preceding referendum.

C.S.H.B. 4578 provides that a citrus producer who fails to pay an assessment may be subject, after reasonable notice and opportunity for hearing, to a penalty set by the commissioner. The bill establishes criteria that the commissioner is required to consider in determining the amount of the penalty. The bill authorizes the corporation to develop a compliance certificate program to manage payment and collection of the assessment. The bill authorizes the commissioner to adopt rules relating to the compliance certificate program, and specifies provisions that may be included in such rules. The bill authorizes the imposition of an assessment lien in favor of the corporation on citrus produced and harvested that year from acreage that is subject to an assessment that is due and unpaid. The bill establishes conditions under which a buyer of citrus takes free of the assessment lien. The bill gives the corporation certain investigatory and inspection powers that it may exercise if it believes there has been a related violation of the law or the commissioner's rules. The bill requires the commissioner by rule to adopt criteria to exempt from payment of an assessment penalty a citrus producer for whom payment would impose an undue financial burden. The bill establishes related limitations, requirements, and authorizations.

C.S.H.B. 4578 establishes the powers of the board and commissioner, and board duties. The bill authorizes the commissioner to appoint an advisory committee for an existing pest management zone or an area of the state that is to be considered by the commissioner for designation as or for inclusion in a pest management zone. The bill authorizes the board to form an advisory

committee and sets out the committee's composition. The bill includes provisions under which the commissioner may add an area to a pest management zone or transfer an area or county from one zone to another in certain situations. The bill includes provisions relating to board procurement policy and contracting by the corporation. The bill provides that venue for an action arising out of the law in which the corporation is a party is in Travis County. The bill makes the corporation, and a pest management zone advisory committee, subject to the open meetings and open records laws. The bill requires the board to have an annual independent audit of books, records of account, and minutes of proceedings maintained by the corporation. The bill provides that the transactions are subject to audit by the state auditor.

C.S.H.B. 4578 requires each person in an active pest management zone growing citrus to furnish the corporation information that the corporation requires concerning the size and location of commercial citrus orchards and of noncommercial citrus grown for ornamental or other purposes.

C.S.H.B. 4578 authorizes TDA, the corporation, or a designated representative of either to enter citrus groves or other premises to carry out the purposes of the bill, including the treatment and monitoring of growing citrus or other host plants. The bill authorizes TDA, the corporation, or a designated representative to inspect groves or premises to determine whether a property is infested with the Asian citrus psyllid or citrus greening. The bill requires an inspection to be conducted during reasonable daylight hours, and establishes related notice requirements.

C.S.H.B. 4578 authorizes the commissioner to adopt reasonable rules regarding areas where citrus may not be planted in a pest management zone if there is reason to believe that planting will jeopardize the success of the program or present a hazard to public health or safety. The bill authorizes the commissioner to adopt rules requiring all growers of citrus in a pest management zone to participate in an Asian citrus psyllid suppression program and growers of commercial citrus to participate in pest and disease management programs that include cost sharing. The bill establishes related notice requirements. The bill authorizes the commissioner to adopt a reasonable schedule of penalty fees to be assessed against growers in a designated pest management zone who do not meet the requirements of the rules relating to reporting of acreage and participation in cost sharing. The bill provides that a penalty fee may not exceed \$50 per acre.

C.S.H.B. 4578 authorizes TDA to destroy or treat, and establishes procedures for the purchase and destruction of, citrus plants or hosts in pest management zones, if TDA determines the action to be necessary. The bill establishes that TDA is not liable to the owner or lessee for the destruction of or injury to any citrus that was planted in a pest management zone after the date that notice is published. The bill specifies that the corporation is liable for the destruction of citrus if the citrus was planted in a pest management zone before the date that notice is published.

C.S.H.B. 4578 authorizes the corporation to carry out programs to destroy and manage the Asian citrus psyllid and citrus greening in Texas by cooperating through written agreements, as approved by the commissioner, with: an agency of the federal government; a state agency; an appropriate state agency of another state contiguous to the affected area to the extent allowed by federal law, the law of the contiguous state, and Texas law; an appropriate agency of a foreign country contiguous to the affected area to the extent allowed by federal law; a group of persons in Texas involved in similar programs; or a person who is engaged in growing, processing, marketing, or handling citrus. The bill authorizes such an agreement to provide for cost charging and for division of duties and responsibilities.

C.S.H.B. 4578 requires the commissioner to develop rules and procedures to protect the eligibility of organic citrus producers to be certified, to ensure that organic and transitional certifications by the commissioner continue to meet national certification standards in order for organic citrus to maintain international marketability, and to maintain the effectiveness of the

Asian citrus psyllid suppression and citrus greening program. The bill prohibits the board from treating or requiring treatment of organic citrus groves with chemicals that are not approved for use on certified organic citrus. The bill authorizes the rules adopted by the commissioner to provide indemnity for organic citrus producers for reasonable losses that result from a prohibition of production of organic citrus or from any requirement of the destruction of organic citrus.

C.S.H.B. 4578 requires the commissioner to develop and adopt rules to allow a citrus producer in a suppression program to use biological, botanical, or other nonsynthetic pest control methods, and requires the commissioner to consider specified factors in developing the rules. The bill requires a citrus producer who chooses to use such an alternative method of control to notify the board, and requires the board and citrus producer to coordinate their actions to prevent the use of substances that would impede the use of alternative controls and the promotion of beneficial insect populations. The bill requires the citrus producer to pay any additional cost of bio-intensive control in addition to any assessment.

C.S.H.B. 4578 requires the commissioner to adopt rules to protect individuals, livestock, wildlife, and honeybee colonies on any premises in a pest management zone on which citrus plants are being grown that have been or are being treated to control or suppress the Asian citrus psyllid and citrus greening. The bill requires such rules to establish the criteria by which the corporation develops its procedures and methods of treatment. The bill requires the criteria to establish a methodology for determining when Asian citrus psyllid population levels have reached economic significance or when citrus greening is present, and to establish an effective treatment regimen that seeks to provide the least possible risk to workers, the public, and the environment. The bill requires the criteria to minimize the effects of the use of pesticides on long-term control methods, including but not limited to the effect a particular pesticide may have on biological controls. The bill requires the criteria to establish methods for monitoring Asian citrus psyllids, citrus greening, and secondary pests. The bill requires the criteria to establish methods for verifying pesticide use reduction and to consider the acute and chronic toxicity of particular pesticides and the quantity of particular pesticides needed. The bill provides that pest management zone treatment plans may take into account the potential for the use of smaller quantities of more toxic substances to result in fewer health and environmental risks than larger quantities of less toxic substances.

C.S.H.B. 4578 requires the commissioner by rule to establish procedures for the informal review and resolution of a claim arising out of certain acts taken by the corporation. The bill requires such rules to include a designation of the acts that are subject to review and the appropriate remedial action. The bill provides that a person dissatisfied with TDA's informal resolution of a claim may appeal TDA's decision to the commissioner. The bill provides that a decision issued by the commissioner on a claim is the final administrative action of the department and is subject to judicial review under the Administrative Procedure Act. The bill establishes that such provisions do not constitute a waiver of the state's immunity from liability.

C.S.H.B. 4578 provides that TDA for implementation purposes may issue or authorize issuance of a certificate that indicates that a regulated article is not infested with the Asian citrus psyllid, as well as a permit that provides for the movement of a regulated article to a restricted destination for limited handling, use, or processing.

C.S.H.B. 4578 authorizes the commissioner to adopt other reasonable rules necessary to carry out the purposes of the bill. The bill authorizes the establishment of an advisory committee to assist the commissioner in the development of rules and includes provisions relating to the composition of the advisory committee.

C.S.H.B. 4578 provides that a person who violates the provisions of the statute or a related rule, or who alters, forges, counterfeits, or uses without authority a certificate, permit, or other document issued under the statute or under a rule adopted under this chapter, commits a Class C

misdeemeanor offense. The bill authorizes the commissioner, if the commissioner determines that a violation of the statute or a rule occurred, to request that the attorney general or the county or district attorney of the county in which the alleged violation occurred or is occurring to file suit for civil, injunctive, or other appropriate relief.

C.S.H.B. 4578 requires the board to issue to the commissioner, and to the appropriate oversight committee in the Texas House of Representatives, an annual report detailing its efforts to carry out the purposes of the law.

C.S.H.B. 4578 includes provisions relating to the discontinuation of the program and corporation and the disposition of associated funds on discontinuance. The bill establishes procedures and requirements for a referendum on discontinuance. The bill makes the board of directors of the corporation subject to the Texas Sunset Act and provides that, unless continued under that act, the board is abolished and the law expires September 1, 2021. The bill provides, however, that the commissioner may order the dissolution of the corporation at any time the commissioner determines that the purposes of the law have been fulfilled or that the corporation is inoperative and abandoned.

### **EFFECTIVE DATE**

September 1, 2009.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 4578 removes provisions in the original containing legislative recognition that the corporation as a quasi-governmental entity must, with certain exceptions, be immune from lawsuits and liability, and therefore prohibiting claims from being brought or continued against the corporation except claims allowed by the Texas Tort Claims Act. The substitute removes provisions in the original specifying that, with the exception of finally adjudicated claims allowed by that act, all payments, contributions, funds, and assessments received or held by the foundation are exempt from garnishment, attachment, execution, or other seizure. The substitute removes provisions in the original specifying that such provisions do not affect or impair any existing or future indebtedness or any existing or future security interest created under a note, security agreement, assignment, or other loan agreement between the corporation and a lender or any judgment, to the extent the judgment allows recovery against the corporation pursuant to a note, security agreement, loan agreement, or other document. The substitute removes a provision in the original specifying that the corporation is a "governmental unit" under that act and specifying that a tort claim against the corporation must be made under that act. The substitute removes a provision in the original specifying that a venue provision does not expand the liability of the corporation. The substitute removes a provision in the original making an advisory committee appointed by the commissioner of agriculture for existing or prospective pest management zones immune from lawsuits and liability to the same extent that the corporation is immune from lawsuits and liability.

C.S.H.B. 4578 removes provisions in the original exempting the corporation's members, directors, officers, and employees from individual liability to a citrus producer or other person for errors in judgment, mistakes, or other acts or omissions, except for instances of gross negligence, individual criminal actions, or acts of dishonesty, and removes provisions in the original specifying that a corporation member, officer, or employee is not individually liable for an act or omission of another corporation member, officer, or employee. The substitute removes a provision in the original establishing that an applicator, unaffiliated with the corporation, that contracts with the corporation to apply pesticides or other chemicals, is not jointly and severally liable for any act or omission of the corporation under the bill's provisions. The substitute removes provisions in the original requiring the corporation to have liability coverage of a specified nature and amount in effect for any control or suppression efforts for which the corporation uses contractors.

C.S.H.B. 4578 removes provisions in the original authorizing the state auditor to examine work papers from an independent audit.