

AN ACT

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.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 74.001, Agriculture Code, is amended to read as follows:

Sec. 74.001. PUBLIC NUISANCE. (a) The legislature finds that cotton pests are a menace to the cotton industry, and that control of those pests is a public necessity. Any portion of the state that is susceptible to infestation by cotton pests must be protected from this public nuisance and threat to the continued stability of the cotton industry.

(b) 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. To protect the cotton industry of this state, volunteer and other noncommercial cotton must be eliminated subject to the provisions of this chapter.

SECTION 2. Subchapter A, Chapter 74, Agriculture Code, is amended by adding Sections 74.0031 and 74.0032 to read as follows:

Sec. 74.0031. COTTON STALK DESTRUCTION. (a) The

1 department shall submit the recommendations of each administrative
2 committee that governs a pest management zone under Section 74.003
3 to the Texas Boll Weevil Eradication Foundation. On review of the
4 administrative committee recommendations, the foundation shall
5 submit to the department an estimate of the amount by which the
6 implementation of each recommendation would increase the cost of
7 administering the boll weevil eradication program.

8 (b) The Texas Boll Weevil Eradication Foundation shall:

9 (1) conduct a study of the effects of incomplete
10 cotton stalk destruction and volunteer cotton control on boll
11 weevil eradication activities; and

12 (2) submit annual recommendations to the department
13 and the board of the foundation for a cotton stalk destruction
14 deadline for each pest management zone.

15 (c) The Texas Boll Weevil Eradication Foundation may
16 consult with its technical advisory committee in fulfilling its
17 duties under Subsection (b).

18 (d) The department shall set a cotton stalk destruction
19 deadline for each pest management zone, with consideration given to
20 the recommendations of the foundation and the applicable
21 administrative committee submitted under Subsection (b).

22 Sec. 74.0032. HOSTABLE COTTON FEE. (a) The department
23 shall establish and collect a hostable cotton fee for fields in
24 which hostable cotton stalks, hostable volunteer cotton, or other
25 hostable noncommercial cotton remains past the stalk destruction
26 deadline set for the applicable pest management zone under Section
27 74.0031. A fee under this section shall be expressed in terms of

1 dollars per acre, per week in which the stalks, volunteer cotton, or
2 other noncommercial cotton remains in the field. The department
3 shall establish a procedure to notify a cotton grower that a fee is
4 due the department under this section.

5 **(b)** If adverse weather conditions or other good cause
6 exists, the administrative committee that governs the applicable
7 pest management zone may request that the department grant an
8 extension of the cotton stalk destruction deadline for any
9 specified part of the pest management zone or for the entire pest
10 management zone. A request under this subsection must be made not
11 later than 10 business days before the applicable cotton stalk
12 destruction deadline. A field is not subject to a hostable cotton
13 fee if the department grants an extension of the deadline. The
14 Texas Boll Weevil Eradication Foundation shall submit to the
15 department an estimate of the amount by which an extension under
16 this subsection will increase the cost of administering the boll
17 weevil eradication program.

18 **(c)** If the applicable administrative committee does not
19 request an extension, or if the department denies a request for an
20 extension of the cotton stalk destruction deadline for a specified
21 part of a pest management zone, a cotton grower may apply for an
22 individual extension of the deadline. A request under this
23 subsection must be made not later than 10 business days before the
24 applicable pest management zone's stalk destruction deadline.

25 **(d)** The Texas Boll Weevil Eradication Foundation shall
26 submit to the department an estimate of the amount by which any
27 extension of a stalk destruction deadline that is granted under

1 Subsection (c) will increase the cost of administering the boll
2 weevil eradication program.

3 (e) Any hostable cotton or hostable cotton stalks that
4 remain in a field after the cotton stalk destruction deadline or any
5 extension of the stalk destruction deadline has passed are subject
6 to the hostable cotton fee established under Subsection (a). Any
7 hostable cotton or hostable cotton stalks that remain in a field for
8 more than 30 days after the stalk destruction deadline or any
9 extension of the deadline are subject to 150 percent of the hostable
10 cotton fee established under Subsection (a).

11 (f) A hostable cotton fee shall be sent to the comptroller
12 and may be appropriated only for the purpose of treating hostable
13 cotton or for other expenses related to boll weevil eradication.
14 The department may contract with the Texas Boll Weevil Eradication
15 Foundation or its successor entity for the treatment, control, or
16 monitoring activities funded from the account.

17 (g) Unless the fee is paid on or before the 45th day after
18 the date the department gives notice to a cotton grower that a
19 hostable cotton fee is due, the department may destroy any cotton or
20 cotton stalks that remain in the field, as provided by Section
21 74.004.

22 (h) The department shall adopt rules to administer this
23 section.

24 SECTION 3. Section 74.102(5), Agriculture Code, is amended
25 to read as follows:

26 (5) "Cotton grower" means a person who grows cotton
27 intended to be commercial [~~and receives income from the sale of~~]

1 cotton. The term includes an individual who as owner, landlord,
2 tenant, or sharecropper is entitled to share in the cotton grown and
3 available for marketing from a farm or to share in the proceeds from
4 the sale of the cotton from the farm or from an indemnity or other
5 payment received from or related to the planting, growing, or
6 failure of the cotton.

7 SECTION 4. Section 74.113, Agriculture Code, is amended by
8 amending Subsection (f) and adding Subsection (1) to read as
9 follows:

10 (f) An assessment levied on cotton growers in an eradication
11 zone may be applied only to:

12 (1) eradication [~~in that zone~~];

13 (2) the foundation's operating costs, including
14 payments on debt incurred for a foundation activity[, ~~except that~~
15 ~~the funds of one zone may not be used to pay another zone's bank~~
16 ~~loans or debts~~]; and

17 (3) the conducting of other programs consistent with
18 the declaration of policy stated in Section 74.101.

19 (1) With the approval of the board and the commissioner, the
20 foundation may transfer the proceeds from the collection of
21 assessments in one eradication zone to another eradication zone.
22 The board shall consult with affected cotton grower steering
23 committees before recommending that the commissioner approve the
24 transfer of proceeds under this subsection. The transferred
25 proceeds may be applied only as provided by Subsection (f).

26 SECTION 5. Subchapter D, Chapter 74, Agriculture Code, is
27 amended by adding Section 74.1135 to read as follows:

1 Sec. 74.1135. ALTERNATIVE METHOD OF ASSESSMENTS. (a) The
2 commissioner may adopt rules that provide for an alternative
3 method, manner, and mechanism by which assessments are imposed and
4 collected under this subchapter. The commissioner may adopt the
5 rules only after receiving a recommendation from the board. The
6 board shall consult with cotton grower steering committees and the
7 technical advisory committee in formulating a recommendation to the
8 commissioner under this subsection. The commissioner may accept,
9 reject, or modify a board recommendation. The rules apply
10 notwithstanding Section 74.113. The rules must require any person
11 collecting an assessment to forward the assessment to the
12 foundation.

13 (b) The maximum amount of an assessment under this section
14 may not exceed the maximum amount of an assessment approved in an
15 assessment referendum under this subchapter.

16 SECTION 6. Sections 74.118(a) and (b), Agriculture Code,
17 are amended to read as follows:

18 (a) The commissioner may adopt reasonable rules regarding
19 areas where cotton may not be planted in an eradication zone if
20 there is reason to believe planting will jeopardize the success of
21 the program by making treatment impracticable or present a hazard
22 to public health or safety.

23 (b) The commissioner may adopt rules relating to
24 [prohibiting the planting of] noncommercial cotton located in
25 eradication zones and requiring that all growers of commercial
26 cotton in an eradication zone participate in a boll weevil or pink
27 bollworm eradication program that includes cost sharing as required

1 by the rules.

2 SECTION 7. Section 74.119, Agriculture Code, is amended to
3 read as follows:

4 Sec. 74.119. AUTHORITY FOR DESTRUCTION OR TREATMENT OF
5 COTTON IN ERADICATION ZONES; COMPENSATION PAYABLE. (a) The
6 department shall ~~[may]~~ destroy or treat hostable volunteer or other
7 hostable noncommercial cotton and establish procedures for the
8 purchase and destruction of commercial cotton in eradication zones
9 if the department determines the action is necessary to carry out
10 the purposes of this subchapter. The department is not liable to
11 the owner or lessee for the destruction of or injury to any cotton
12 that was planted in an eradication zone after publication of notice
13 as provided by this subchapter. The foundation is liable for the
14 destruction of cotton if the cotton was planted in an eradication
15 zone before publication of the notice.

16 (b) Not later than January 1, 2010, the department shall
17 adopt rules providing for the regulation and control of volunteer
18 and other noncommercial cotton in pest management zones. At a
19 minimum, the rules must:

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

24 (2) allow the department or a person designated by the
25 department:

26 (A) to monitor and treat hostable volunteer or
27 other hostable noncommercial cotton that is located in a crop field

1 for boll weevil infestation if the grower or landowner does not
2 destroy the cotton in compliance with the notice from the
3 department; and

4 (B) to destroy hostable volunteer or other
5 hostable noncommercial cotton that is not in a crop field, as
6 provided by Section 74.004.

7 (c) If a grower or landowner does not destroy hostable
8 volunteer or other hostable noncommercial cotton as required by
9 Subsection (b)(1), the grower or owner shall pay to the department a
10 volunteer cotton fee in an amount determined by the department. A
11 fee under this subsection:

12 (1) may be assessed only on acreage where hostable
13 volunteer or other hostable noncommercial cotton is located;

14 (2) may not be less than one-half the amount the grower
15 or owner would owe if the entire acreage were planted with cotton;
16 and

17 (3) shall be deposited to the credit of the hostable
18 cotton fee account established by Section 74.0032.

19 SECTION 8. Section 74.127(a), Agriculture Code, is amended
20 to read as follows:

21 (a) The board of directors of the official cotton growers'
22 boll weevil eradication foundation is subject to Chapter 325,
23 Government Code (Texas Sunset Act). Unless continued in existence
24 as provided by that chapter, the board is abolished and this
25 subchapter expires September 1, 2021 [~~2009~~].

26 SECTION 9. This Act takes effect immediately if it receives
27 a vote of two-thirds of all the members elected to each house, as

H.B. No. 1580

1 provided by Section 39, Article III, Texas Constitution. If this
2 Act does not receive the vote necessary for immediate effect, this
3 Act takes effect September 1, 2009.

H.B. No. 1580

President of the Senate

Speaker of the House

I certify that H.B. No. 1580 was passed by the House on April 7, 2009, by the following vote: Yeas 144, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 1580 on May 14, 2009, by the following vote: Yeas 143, Nays 0, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1580 was passed by the Senate, with amendments, on May 7, 2009, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor