

1-1 By: Flynn, Kolkhorst, McClendon (Senate Sponsor-Hegar) H.B. No. 1580
1-2 (In the Senate - Received from the House April 8, 2009;
1-3 April 15, 2009, read first time and referred to Committee on
1-4 Government Organization; May 1, 2009, reported adversely, with
1-5 favorable Committee Substitute by the following vote: Yeas 7,
1-6 Nays 0; May 1, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 1580 By: Hegar

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the continuation and functions of the board of
1-11 directors of the official cotton growers' boll weevil eradication
1-12 foundation and the management of certain cotton in pest management
1-13 zones.

1-14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-15 SECTION 1. Section 74.001, Agriculture Code, is amended to
1-16 read as follows:

1-17 Sec. 74.001. PUBLIC NUISANCE. (a) The legislature finds
1-18 that cotton pests are a menace to the cotton industry, and that
1-19 control of those pests is a public necessity. Any portion of the
1-20 state that is susceptible to infestation by cotton pests must be
1-21 protected from this public nuisance and threat to the continued
1-22 stability of the cotton industry.

1-23 (b) The legislature finds that volunteer and other
1-24 noncommercial cotton is a public nuisance that threatens the cotton
1-25 growers' boll weevil eradication program by serving as a host for
1-26 cotton pests such as boll weevils and pink bollworms. To protect
1-27 the cotton industry of this state, volunteer and other
1-28 noncommercial cotton must be eliminated subject to the provisions
1-29 of this chapter.

1-30 SECTION 2. Subchapter A, Chapter 74, Agriculture Code, is
1-31 amended by adding Sections 74.0031 and 74.0032 to read as follows:

1-32 Sec. 74.0031. COTTON STALK DESTRUCTION. (a) The
1-33 department shall submit the recommendations of each administrative
1-34 committee that governs a pest management zone under Section 74.003
1-35 to the Texas Boll Weevil Eradication Foundation. On review of the
1-36 administrative committee recommendations, the foundation shall
1-37 submit to the department an estimate of the amount by which the
1-38 implementation of each recommendation would increase the cost of
1-39 administering the boll weevil eradication program.

1-40 (b) The Texas Boll Weevil Eradication Foundation shall:

1-41 (1) conduct a study of the effects of incomplete
1-42 cotton stalk destruction and volunteer cotton control on boll
1-43 weevil eradication activities; and

1-44 (2) submit annual recommendations to the department
1-45 and the board of the foundation for a cotton stalk destruction
1-46 deadline for each pest management zone.

1-47 (c) The Texas Boll Weevil Eradication Foundation may
1-48 consult with its technical advisory committee in fulfilling its
1-49 duties under Subsection (b).

1-50 (d) The department shall set a cotton stalk destruction
1-51 deadline for each pest management zone, with consideration given to
1-52 the recommendations of the foundation and the applicable
1-53 administrative committee submitted under Subsection (b).

1-54 Sec. 74.0032. HOSTABLE COTTON FEE. (a) The department
1-55 shall establish a hostable cotton fee for fields in which hostable
1-56 cotton stalks, hostable volunteer cotton, or other hostable
1-57 noncommercial cotton remains past the stalk destruction deadline
1-58 set for the applicable pest management zone under Section 74.0031.
1-59 A fee under this section shall be expressed in terms of dollars per
1-60 acre, per week in which the stalks, volunteer cotton, or other
1-61 noncommercial cotton remains in the field. The department shall
1-62 establish a procedure to notify a cotton grower that a fee is due
1-63 the department under this section.

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

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

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

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

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

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

(5) "Cotton grower" means a person who grows cotton intended to be commercial ~~[and receives income from the sale of]~~ cotton. The term includes an individual who as owner, landlord, tenant, or sharecropper is entitled to share in the cotton grown and available for marketing from a farm or to share in the proceeds from the sale of the cotton from the farm ~~or from an indemnity or other payment received from or related to the planting, growing, or failure of the cotton.~~

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

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

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

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

(l) With the approval of the board and the commissioner, the

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

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

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

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

SECTION 6. Section 74.118(a), Agriculture Code, is amended to read as follows:

(a) The commissioner may adopt reasonable rules regarding areas where cotton may not be 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. Section 74.119, Agriculture Code, is amended to read as follows:

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

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

(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 the department; and

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

(A) 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 the department; and

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

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

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

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

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

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

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

SECTION 9. 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, 2009.

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