

By: Martinez

H.B. No. 4578

Substitute the following for H.B. No. 4578:

By: Anderson

C.S.H.B. No. 4578

A BILL TO BE ENTITLED

AN ACT

relating to the establishment of the official citrus producers' pest and disease management corporation; providing penalties.

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

SECTION 1. Subtitle B, Title 5, Agriculture Code, is amended by adding Chapter 80 to read as follows:

CHAPTER 80. OFFICIAL CITRUS PRODUCERS' PEST AND DISEASE

MANAGEMENT CORPORATION

Sec. 80.001. FINDINGS AND DECLARATION OF POLICY. (a) The legislature finds that:

(1) the insect known as the Asian citrus psyllid and the disease known as citrus greening are public nuisances and menaces to the citrus industry, and their control and suppression is a public necessity;

(2) because of the natural migration patterns of the Asian citrus psyllid, the control and suppression of the nuisance can best be accomplished by dividing the commercial citrus-growing areas into separate zones so that integrated pest management programs may be developed for each zone;

(3) there is a need for a quasi-governmental entity acting under the supervision and control of the commissioner whose members are actual citrus producers who would be represented on the board of the entity by directors elected by them to manage control and suppression programs and to furnish expertise in the field of

1 insect control and suppression, because such an entity would  
2 enhance the interest and participation of citrus producers in the  
3 program;

4 (4) citrus producers, in partnership with the state  
5 and federal governments, have made significant investments toward  
6 the suppression of these pests and disease in this state; and

7 (5) it is essential to the well-being of the citrus  
8 industry and the agricultural economy of this state that the  
9 investments of the citrus producers and the state and federal  
10 governments be protected.

11 (b) It is the intent of the legislature that the program of  
12 control and suppression of the Asian citrus psyllid be carried out  
13 with the best available integrated pest management techniques.

14 (c) The department may recover costs for administration of  
15 this chapter.

16 Sec. 80.002. DESIGNATION OF ENTITY TO CARRY OUT ASIAN  
17 CITRUS PSYLLID AND CITRUS GREENING CONTROL AND SUPPRESSION. (a)  
18 The Texas Citrus Pest and Disease Management Corporation, Inc., a  
19 Texas nonprofit corporation, shall be recognized by the department  
20 as the entity to plan, carry out, and operate suppression programs  
21 to manage and control the Asian citrus psyllid and citrus greening  
22 in citrus plants in the state under the supervision of the  
23 department as provided by this chapter.

24 (b) The commissioner may terminate the corporation's  
25 designation as the entity recognized to carry out Asian citrus  
26 psyllid control and management by giving 45 days' written notice to  
27 the corporation and by designating a successor entity. If the

1 commissioner designates a successor to the corporation, the  
2 successor has all the powers and duties of the corporation under  
3 this chapter. Any successor to the corporation shall assume and  
4 shall be responsible for all obligations and liabilities relating  
5 to any notes, security agreements, assignments, loan agreements,  
6 and any other contracts or other documents entered into by the  
7 corporation with or for the benefit of any financial institution or  
8 its predecessor, successor, or assignee.

9 Sec. 80.003. DEFINITIONS. In this chapter:

10 (1) "Board" means the board of directors of the Texas  
11 Citrus Pest and Disease Management Corporation, Inc.

12 (2) "Asian citrus psyllid" means Diaphorina citri  
13 Kuwayama.

14 (3) "Commissioner" means the commissioner of  
15 agriculture.

16 (4) "Citrus" means:

17 (A) a citrus plant;

18 (B) a part of a citrus plant, including trees,  
19 limbs, flowers, roots, and leaves; or

20 (C) citrus products.

21 (5) "Citrus greening" means the disease caused by the  
22 Asian citrus psyllid.

23 (6) "Citrus producer" means a person who grows citrus  
24 and receives income from the sale of citrus. The term includes an  
25 individual who as owner, landlord, tenant, or sharecropper is  
26 entitled to share in the citrus grown and available for marketing  
27 from a farm or to share in the proceeds from the sale of the citrus

1 from the farm.

2 (7) "Suppression" means control of the numbers and  
3 migration of the Asian citrus psyllid to the extent that the  
4 commissioner does not consider further management of the Asian  
5 citrus psyllid necessary to prevent economic loss to citrus  
6 producers.

7 (8) "Pest management zone" means a geographic area  
8 designated by the commissioner in accordance with Section 80.005 in  
9 which citrus producers by referendum approve their participation in  
10 a citrus pest control program.

11 (9) "Corporation" means the Texas Citrus Pest and  
12 Disease Management Corporation, Inc., a Texas nonprofit  
13 corporation.

14 (10) "Host" means a plant or plant product in which the  
15 Asian citrus psyllid is capable of completing any portion of its  
16 life cycle.

17 (11) "Infested" means the presence of the Asian citrus  
18 psyllid in any life stage or the existence of generally accepted  
19 entomological evidence from which it may be concluded with  
20 reasonable certainty that the Asian citrus psyllid is present.

21 (12) "Integrated pest management" means the  
22 coordinated use of pest and environmental information with  
23 available pest control methods, including pesticides, natural  
24 predator controls, cultural farming practices, and climatic  
25 conditions, to prevent unacceptable levels of pest damage by the  
26 most economical means and with the least possible hazard to people,  
27 property, and the environment.

1           (13) "Regulated article" means an article carrying or  
2 capable of carrying the Asian citrus psyllid, including citrus  
3 plants, nursery plants, citrus rootstock, or other hosts.

4           Sec. 80.004. ADVISORY COMMITTEES. (a) The commissioner  
5 may appoint an advisory committee for an existing pest management  
6 zone or an area of the state that is to be considered by the  
7 commissioner for designation as or inclusion in a pest management  
8 zone. The committee shall gather advice, input, and guidance from  
9 citrus producers from the area represented by the committee  
10 concerning the interest in and concerns about the implementation of  
11 this chapter.

12           (b) Each advisory committee may consider and make  
13 recommendations to the commissioner and the corporation  
14 concerning:

15           (1) the geographic boundaries for a proposed pest  
16 management zone;

17           (2) the amount of local interest in operating a  
18 suppression program;

19           (3) the basis and amount of an assessment necessary to  
20 support a suppression program;

21           (4) ongoing implementation of a suppression program  
22 approved by growers in a pest management zone; and

23           (5) any other matter requested by the commissioner or  
24 the corporation.

25           (c) Each advisory committee appointed under this section  
26 must include a sufficient number of citrus producers to ensure  
27 adequate representation across the pest management zone and other

1 persons as determined by the commissioner.

2 (d) An advisory committee established under this section is  
3 subject to Chapters 551 and 552, Government Code.

4 Sec. 80.005. CREATION OF PEST MANAGEMENT ZONES. (a) The  
5 commissioner by rule may designate an area of this state as a  
6 proposed pest management zone.

7 (b) The commissioner may hold a public hearing in the  
8 proposed pest management zone to discuss the proposed geographic  
9 boundaries of the zone. The public hearing may include any other  
10 topic allowed under this chapter.

11 (c) After the adoption of a rule under Subsection (a), the  
12 commissioner shall conduct a referendum under Section 80.006.

13 Sec. 80.006. PEST MANAGEMENT ZONE REFERENDA. (a) The  
14 commissioner shall conduct a referendum in each proposed pest  
15 management zone to determine whether citrus producers want to  
16 establish a pest management zone.

17 (b) Pest management zone referenda shall be conducted under  
18 the procedures provided by Section 80.016.

19 (c) A proposed pest management zone referendum ballot must  
20 include or be accompanied by information about the proposed pest  
21 management zone, including:

22 (1) a statement of the purpose of the Asian citrus  
23 psyllid suppression program;

24 (2) the geographic area included in the proposed pest  
25 management zone;

26 (3) a general summary of rules adopted by the  
27 commissioner under Sections 80.016, 80.020, and 80.022, including a

1 description of:

2 (A) citrus producer responsibilities; and

3 (B) penalties for noncompliance with rules

4 adopted under this chapter; and

5 (4) an address and toll-free telephone number that a  
6 citrus producer may use to request more information about the  
7 referendum or the Asian citrus psyllid suppression program.

8 (d) If a referendum to establish a pest management zone is  
9 not approved, the concurrent election of a board member from the  
10 proposed pest management zone under Section 80.007 has no effect,  
11 and the commissioner shall appoint a representative to the board  
12 from the area.

13 (e) The corporation may request the commissioner to call  
14 additional referenda in a proposed pest management zone in which a  
15 referendum has not been approved. An additional pest management  
16 zone referendum and concurrent board election may not be held  
17 before the first anniversary of the date of the preceding  
18 referendum.

19 (f) After the approval of any referendum, the eligible  
20 voters shall be allowed, by subsequent referenda, to vote on  
21 whether to continue their assessments. The requirements for an  
22 initial referendum must be complied with in a subsequent  
23 referendum.

24 Sec. 80.007. BOARD ELECTIONS. (a) The initial election for  
25 board members from a proposed pest management zone shall be held  
26 concurrently with a pest management zone referendum held under  
27 Section 80.006. Each pest management zone must be represented on

1 the board and remain represented on the board until suppression  
2 operations are concluded and all debt of the pest management zone is  
3 paid.

4 (b) A board election shall be conducted under the procedures  
5 provided by this section and Section 80.016.

6 (c) A citrus producer who is eligible to vote in a  
7 referendum or election under this chapter is eligible to be a  
8 candidate for and member of the board if the person has at least  
9 seven years of experience as a citrus producer and otherwise meets  
10 the qualifications for the office.

11 (d) A citrus producer who wants to be a candidate for the  
12 board must meet the qualifications for board membership and file an  
13 application with the commissioner. The application must be:

14 (1) filed not later than the 30th day before the date  
15 set for the board election;

16 (2) on a form approved by the commissioner; and

17 (3) signed by at least 10 citrus producers who are  
18 eligible to vote in the board election.

19 (e) On receipt of an application and verification that the  
20 application meets the requirements of Subsection (d), an  
21 applicant's name shall be placed on the ballot for the board  
22 election.

23 (f) An eligible voter may vote for a citrus producer whose  
24 name does not appear on the official ballot by writing that person's  
25 name on the ballot.

26 (g) A board election must be preceded by at least 45 days'  
27 notice published in one or more newspapers published and



1 distributed in the proposed or established pest management zone.  
2 The notice shall be published not less than once a week for three  
3 consecutive weeks. Not later than the 45th day before the date of  
4 the election, direct written notice of the election shall be given  
5 to each AgriLife Extension agent in the pest management zone.

6 (h) Each board member shall be sworn into office by a  
7 representative of the commissioner by taking the oath of office  
8 required for elected officers of the state.

9 Sec. 80.008. COMPOSITION OF BOARD. (a) The board is  
10 composed of members elected from each pest management zone  
11 established by referendum, members appointed by the commissioner  
12 from other citrus-growing areas of the state, and members appointed  
13 by the commissioner under Subsection (b). The commissioner shall  
14 appoint an initial board composed of 15 members. Except as provided  
15 by Subsection (b), the term of each board position may not exceed  
16 four years.

17 (b) In making appointments under this section, the  
18 commissioner shall appoint the following board members, selected  
19 from a variety of citrus-growing regions of the state, for  
20 four-year terms:

21 (1) an agricultural lender;

22 (2) an independent entomologist who is an integrated  
23 pest management specialist;

24 (3) two representatives from industries allied with  
25 citrus production; and

26 (4) a representative from the pest control industry.

27 (c) The commissioner may change the number of board

1 positions or the pest management zone representation on the board  
2 to accommodate changes in the number of pest management zones. A  
3 change under this subsection may not contravene another provision  
4 of this chapter.

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

7 (e) On 30 days' notice and opportunity for hearing, the  
8 commissioner may replace any unelected board member of the  
9 corporation.

10 Sec. 80.009. POWERS OF BOARD AND COMMISSIONER. (a) The  
11 board may:

12 (1) conduct programs consistent with the declaration  
13 of policy stated in Section 80.001;

14 (2) accept, as necessary to implement this chapter,  
15 gifts and grants;

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

18 (4) take other action and exercise other authority as  
19 necessary to execute any act authorized by this chapter or the Texas  
20 Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's  
21 Texas Civil Statutes); and

22 (5) form an advisory committee composed of individuals  
23 from this state, other states, or other countries and change  
24 membership on the committee, as necessary. Any advisory committee  
25 created under this subdivision for the purpose of establishing  
26 treatment methods shall include among its members persons with  
27 knowledge of the effects of different treatments on the health of

1 agricultural workers, the local population, and the ecosystem,  
2 including but not limited to the effects of a particular method of  
3 treatment on beneficial organisms and wildlife, the potential for  
4 secondary infestations from nontarget pests, and the potential for  
5 pest resistance to particular methods of treatment.

6 (b) On petition of at least 30 percent of the citrus  
7 producers eligible to vote in the proposed area, the commissioner  
8 may, or at the commissioner's discretion, the commissioner by rule  
9 may add an area to a pest management zone or transfer an area or  
10 county from one zone to another zone if:

11 (1) citrus production has begun or could begin in the  
12 area;

13 (2) the area is adjacent to a pest management zone or  
14 is in an area with biological characteristics similar to the pest  
15 management zone; and

16 (3) the addition is approved in a referendum held in  
17 the area.

18 (c) The board must adopt a procurement policy, subject to  
19 approval by the commissioner, outlining the procedures to be used  
20 in purchasing.

21 (d) The commissioner at any time may inspect the books and  
22 other financial records of the corporation.

23 Sec. 80.010. BOARD DUTIES. (a) The board shall have an  
24 annual independent audit of the books, records of account, and  
25 minutes of proceedings maintained by the corporation prepared by an  
26 independent certified public accountant or a firm of independent  
27 certified public accountants. The audit must include information

1 for each zone in which a suppression program has been conducted  
2 under this chapter. The audit shall be filed with the board, the  
3 commissioner, and the state auditor and be made available to the  
4 public by the corporation or the commissioner. The transactions of  
5 the corporation are subject to audit by the state auditor in  
6 accordance with Chapter 321, Government Code.

7 (b) Not later than the 45th day after the last day of the  
8 fiscal year, the board shall submit to the commissioner a report  
9 itemizing all income and expenditures and describing all activities  
10 of the corporation during the fiscal year.

11 (c) The corporation shall provide fidelity bonds in amounts  
12 determined by the board for employees or agents who handle money for  
13 the corporation.

14 (d) The corporation and the board are state agencies for the  
15 following purposes only:

16 (1) exemption from taxation, including exemption from  
17 sales and use taxes and taxes under Chapter 152, Tax Code; and

18 (2) exemption from vehicle registration fees.

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

23 (f) The board shall collect data on the type and quantity of  
24 pesticides used in accordance with this chapter. The data shall be  
25 filed with the commissioner.

26 (g) All money collected under this chapter shall be used  
27 solely to finance programs approved by the commissioner as

1 consistent with this chapter.

2 (h) The corporation is subject to the requirements of:

3 (1) the open meetings law, Chapter 551, Government  
4 Code; and

5 (2) the public information law, Chapter 552,  
6 Government Code.

7 (i) A board member may not vote on any matter in which the  
8 member has a direct pecuniary interest. A board member is subject to  
9 the same restrictions as a local public official under Chapter 171,  
10 Local Government Code.

11 Sec. 80.011. ADMINISTRATIVE REVIEW. (a) The commissioner  
12 by rule shall establish procedures for the informal review and  
13 resolution of a claim arising out of certain acts taken by the  
14 corporation under this chapter. Rules established under this  
15 section shall include a designation of the acts that are subject to  
16 review under this subsection and the appropriate remedial action,  
17 as authorized by this chapter.

18 (b) A person dissatisfied with the department's informal  
19 resolution of a claim under procedures adopted under Subsection (a)  
20 may appeal the department's decision to the commissioner.

21 (c) A decision issued by the commissioner on a claim  
22 appealed under Subsection (b) is the final administrative action of  
23 the department and is subject to judicial review under Chapter  
24 2001, Government Code.

25 (d) This section does not constitute a waiver of the state's  
26 immunity from liability.

27 Sec. 80.012. CONTRACTING. (a) For a purchase of goods and

1 services under this chapter, the corporation may purchase goods and  
2 services that provide the best value for the corporation.

3 (b) In determining the best value for the corporation, the  
4 purchase price and whether the goods or services meet  
5 specifications are the most important considerations. However, the  
6 corporation may consider other relevant factors, including:

7 (1) the quality and reliability of the goods and  
8 services;

9 (2) the delivery terms;

10 (3) indicators of probable vendor performance under  
11 the contract, including:

12 (A) past vendor performance;

13 (B) the vendor's financial resources and ability  
14 to perform;

15 (C) the vendor's experience or demonstrated  
16 capability and responsibility; and

17 (D) the vendor's ability to provide reliable  
18 maintenance agreements and support;

19 (4) the cost of any employee training associated with  
20 a purchase; and

21 (5) other factors relevant to determining the best  
22 value for the corporation in the context of a particular purchase.

23 Sec. 80.013. BOARD MEMBER COMPENSATION. Board members  
24 serve without compensation but are entitled to reimbursement for  
25 reasonable and necessary expenses incurred in the discharge of  
26 their duties.

27 Sec. 80.014. DISCONTINUATION OF PROGRAM AND CORPORATION AND

1 DISPOSITION OF FUNDS ON DISCONTINUANCE. (a) On the determination  
2 by the corporation that the Asian citrus psyllid suppression  
3 program has been completed in all pest management zones established  
4 under this chapter, the corporation shall provide notice of the  
5 completion to the commissioner along with a request for  
6 discontinuance of the control and suppression program and  
7 collection of the assessment. Any request under this subsection  
8 must include documentation supporting the fact that the Asian  
9 citrus psyllid is no longer a threat to the state's citrus industry  
10 and a plan for discontinuance of the program and assessment.

11 (b) The commissioner shall determine whether or not the  
12 further suppression of the Asian citrus psyllid is necessary in the  
13 pest management zones and approve or disapprove discontinuance of  
14 the corporation and the plan for dissolution.

15 (c) On completion of the dissolution, the corporation shall  
16 file a final report with the commissioner, including a financial  
17 report, and submit all remaining funds into the trust of the  
18 commissioner. Final books of the corporation shall be filed with  
19 the commissioner and are subject to audit by the department.

20 (d) The commissioner shall pay from the corporation's  
21 remaining funds all of the corporation's outstanding obligations.

22 (e) Funds remaining after payment under Subsection (d)  
23 shall be returned to contributing citrus producers on a pro rata  
24 basis.

25 (f) If 30 percent or more of the citrus producers eligible  
26 to vote within a zone participating in the program present to the  
27 commissioner a petition calling for a referendum of the qualified

1 voters on the proposition of discontinuing the program, the  
2 commissioner shall conduct a referendum for that purpose.

3 (g) The commissioner shall give notice of the referendum,  
4 the referendum shall be conducted, and the results shall be  
5 declared in the manner provided by law for the original referendum  
6 and election, with any necessary exceptions provided by rule of the  
7 commissioner.

8 (h) The commissioner shall conduct the referendum before  
9 the 90th day after the date the petition was filed, except that a  
10 referendum may not be held before the second anniversary of any  
11 other referendum in the pest management zone pertaining to  
12 establishing or discontinuing the pest management zone.

13 (i) Approval of the proposition requires the same vote as  
14 required in a referendum under Section 80.016(g). If the  
15 proposition is approved, the suppression program is abolished and  
16 the pest management zone ceases to exist on payment of all debts of  
17 the pest management zone.

18 Sec. 80.015. ASSESSMENT REFERENDA. (a) The commissioner  
19 shall propose the assessment needed in each pest management zone to  
20 ensure the stability of the citrus industry by suppressing the  
21 public nuisance caused by the Asian citrus psyllid.

22 (b) The commissioner shall propose in a referendum the:

23 (1) maximum assessment to be paid by citrus producers  
24 having production in the pest management zone; and

25 (2) time for which the assessment will be made.

26 (c) With the commissioner's approval, the corporation may  
27 make an assessment in a pest management zone at a level less than



1 the assessment approved by the referendum.

2 (d) The commissioner shall conduct an assessment referendum  
3 under the procedures provided by Section 80.016.

4 (e) If an assessment referendum is approved, the  
5 corporation may collect the assessment.

6 (f) An assessment levied on citrus producers in a pest  
7 management zone may be applied only to:

8 (1) pest control in that zone;

9 (2) the corporation's operating costs, including  
10 payments on debt incurred for a corporation activity, except that  
11 the funds of one zone may not be used to pay another zone's bank  
12 loans or debts; and

13 (3) the conducting of other programs consistent with  
14 the declaration of policy stated in Section 80.001.

15 (g) The assessment shall be adequate and necessary to  
16 achieve the goals of this chapter. The amount of the assessment  
17 shall be determined by criteria established by the commissioner,  
18 including:

19 (1) the extent of infestation;

20 (2) the amount of acreage planted;

21 (3) historical efforts to suppress;

22 (4) the growing season;

23 (5) epidemiology;

24 (6) historical weather conditions; and

25 (7) the costs and financing of the program.

26 (h) The commissioner shall give notice of and hold a public  
27 hearing in the pest management zone regarding the proposed

1 assessment referendum. Before the referendum, the commissioner  
2 shall review and approve:

3 (1) the amount of the assessment;

4 (2) the basis for the assessment;

5 (3) the time for payment of the assessment;

6 (4) the method of allocation of the assessment among  
7 citrus producers;

8 (5) the restructuring and repayment schedule for any  
9 preexisting debt; and

10 (6) the amount of debt to be incurred in the pest  
11 management zone.

12 (i) The commissioner shall on a zone-by-zone basis set the  
13 date on which assessments are due and payable.

14 (j) Each year, the commissioner shall review and approve the  
15 corporation's operating budget.

16 (k) The corporation shall prepare and mail billing  
17 statements to each citrus producer subject to the assessment that  
18 state the amount due and the due date. The assessments shall be  
19 sent to the corporation.

20 Sec. 80.016. CONDUCT OF BOARD ELECTIONS AND REFERENDA;  
21 BALLOTING. (a) The commissioner shall conduct a referendum or  
22 board election authorized under this chapter.

23 (b) The corporation shall bear all expenses incurred in  
24 conducting a referendum or board election.

25 (c) The commissioner shall adopt rules for voting in board  
26 elections and referenda to establish pest management zones. Rules  
27 adopted under this subsection must include provisions for

1 determining:

2 (1) who is a citrus producer eligible to vote in an  
3 election or referendum;

4 (2) whether a board member is elected by a plurality or  
5 a majority of the votes cast; and

6 (3) the area from which each board member is elected.

7 (d) A citrus producer having citrus production in a proposed  
8 or established pest management zone is entitled to:

9 (1) vote in a referendum concerning the pest  
10 management zone; and

11 (2) elect board members to represent the pest  
12 management zone.

13 (e) An eligible citrus producer may vote only once in a  
14 referendum or board election.

15 (f) Ballots in a referendum or board election shall be  
16 mailed directly to a central location, as determined by the  
17 commissioner. A citrus producer eligible to vote in a referendum or  
18 board election who has not received a ballot from the commissioner,  
19 corporation, or another source shall be offered the option of  
20 requesting a ballot by mail or obtaining a ballot at the office of  
21 Texas AgriLife Extension or a government office distributing  
22 ballots in a county in the proposed or established zone in which the  
23 referendum or board election is conducted.

24 (g) A referendum is approved if:

25 (1) at least two-thirds of those voting vote in favor  
26 of the referendum; or

27 (2) those voting in favor of the referendum cultivate

1 more than 50 percent, as determined by the commissioner, of the  
2 citrus acreage in the relevant pest management zone.

3 (h) If a referendum under this chapter is not approved, the  
4 commissioner may conduct another referendum. A referendum under  
5 this subsection may not be held before the first anniversary of the  
6 date on which the previous referendum on the same issue was held.

7 (i) A public hearing regarding the proposed suppression  
8 program, including information regarding regulations to be  
9 promulgated by the commissioner, may be held by the commissioner in  
10 each of several locations in each Asian citrus psyllid pest  
11 management zone.

12 (j) Individual voter information, including an individual's  
13 vote in a referendum or board election conducted under this  
14 section, is confidential and is not subject to disclosure under  
15 Chapter 552, Government Code.

16 Sec. 80.017. PAYMENT OF ASSESSMENTS; ASSESSMENT LIENS. (a)  
17 A citrus producer who fails to pay an assessment levied under this  
18 chapter when due may be subject, after reasonable notice and  
19 opportunity for hearing, to a penalty set by the commissioner. In  
20 determining the amount of the penalty to be assessed, the  
21 commissioner shall consider:

22 (1) the seriousness of the violation, including the  
23 nature, circumstances, and extent of the violation;

24 (2) the history of previous violations;

25 (3) the amount necessary to deter future violations;

26 (4) the economic situation of the citrus producer; and

27 (5) any other matter that justice may require.

1       (b) The corporation may develop a compliance certificate  
2 program to manage the payment and collection of an assessment  
3 levied under this chapter. Under the program the corporation,  
4 subject to department rules, may issue a compliance certificate for  
5 citrus for which an assessment has been paid.

6       (c) In addition to any other remedies for the collection of  
7 assessments and penalties, the commissioner may adopt rules  
8 relating to the compliance certificate program for suppression  
9 assessments. The rules may include:

10           (1) provisions establishing and relating to the  
11 obligations of growers, packers, and buyers in due course of citrus  
12 produced in active pest management zones to ensure that assessments  
13 are paid within a prescribed time period;

14           (2) provisions allowing incentives in the form of  
15 discounted assessments for growers who pay assessments within a  
16 prescribed time period;

17           (3) provisions establishing penalties and interest  
18 against growers who pay assessments after a prescribed time period;  
19 and

20           (4) other provisions the commissioner determines are  
21 proper.

22       (d) In addition to any other remedies for the collection of  
23 assessments and penalties, an assessment lien in favor of the  
24 corporation attaches and is perfected 60 days after the date the  
25 corporation mails notice of the assessment on citrus produced and  
26 harvested that year from the acreage that is subject to the  
27 assessment that is due and unpaid. An assessment lien is not an

1 agricultural lien for the purposes of Chapter 9, Business &  
2 Commerce Code, and is not subject to the provisions of that chapter.  
3 An assessment lien is subject to and preempted by the Food Security  
4 Act of 1985 (7 U.S.C. Section 1631 et seq.) and shall be treated  
5 under that Act in the same manner as a security interest created by  
6 the seller. A buyer of citrus takes free of the assessment lien if  
7 the buyer:

8 (1) receives a compliance certificate issued by the  
9 corporation when the buyer purchases the citrus that certifies that  
10 the assessment has been paid to the corporation;

11 (2) pays for the citrus by a check on which the  
12 department is named as a joint payee;

13 (3) does not receive notice of the assessment lien as  
14 required by the Food Security Act of 1985 (7 U.S.C. Section 1631 et  
15 seq.); or

16 (4) buys the citrus from a person other than the  
17 producer of the citrus.

18 (e) The corporation may assign, with the approval of the  
19 commissioner, assessments or liens in favor of the corporation as  
20 collateral for a loan to the corporation only if the proceeds of the  
21 loan are designated for use in the pest management zone from which  
22 the assessments or liens originated.

23 (f) If the department believes that a violation of this  
24 section or a rule adopted under this section has occurred, the  
25 department may investigate and, during normal business hours, audit  
26 and inspect the records of the person who is the subject of the  
27 investigation.

1       Sec. 80.018. EXEMPTION FROM ASSESSMENT PENALTIES. (a) The  
2 commissioner by rule shall adopt criteria to exempt from payment of  
3 an assessment penalty under Section 80.017 a citrus producer for  
4 whom payment would impose an undue financial burden.

5       (b) A citrus producer is not eligible for an exemption under  
6 this section for a year in which the amount computed by subtracting  
7 the assessments and penalties due under this chapter from the  
8 citrus producer's net income subject to federal income taxation in  
9 the previous year is greater than \$15,000.

10       (c) A citrus producer who applies for an exemption under  
11 this section must use a form prescribed by the commissioner. A  
12 citrus producer must file a separate application form for each year  
13 for which the citrus producer claims an exemption.

14       (d) The commissioner may establish a payment plan for a  
15 citrus producer applying for an exemption under this section.

16       (e) The commissioner shall promptly notify an applicant of  
17 the determination regarding the applicant's request for an  
18 exemption.

19       (f) If an exemption under this section is denied,  
20 assessments and penalties for the year for which the application is  
21 made are due on the later of:

22               (1) the date on which they would be due in the absence  
23 of an application for exemption; or

24               (2) 30 days after the date the applicant receives  
25 notice of the denial.

26       (g) In addition to the authority provided under Subsections  
27 (a)-(f), the commissioner may reduce or waive an assessment penalty

1 as appropriate and necessary.

2 Sec. 80.019. ENTRY OF PREMISES; SUPPRESSION ACTIVITIES;  
3 INSPECTIONS. The department, the corporation, or a designated  
4 representative of either entity may enter citrus groves or other  
5 premises to carry out the purposes of this chapter, which include  
6 the treatment and monitoring of growing citrus or other host  
7 plants. The department, the corporation, or a designated  
8 representative of either entity may inspect groves or premises in  
9 this state for the purpose of determining whether the property is  
10 infested with the Asian citrus psyllid or citrus greening. An  
11 inspection must be conducted during reasonable daylight hours. The  
12 department shall give notice by publication of the planned schedule  
13 of dates for entry by the department, the corporation, or a  
14 designated representative of either entity, to the owner or  
15 occupant of the groves or premises to carry out the purposes of this  
16 chapter, including treatment, monitoring, or inspection functions.  
17 The department shall publish notice of the planned schedule to  
18 enter the groves or premises in a newspaper of general circulation  
19 in the pest management zone not less than once a week for two weeks  
20 immediately before the scheduled dates of entry. In addition to the  
21 notice published by the department, the corporation shall post  
22 notice of the planned schedule to enter groves or premises to carry  
23 out the purposes of this chapter at the county courthouse of each  
24 county in the pest management zone not later than the 15th day  
25 before the planned dates of entry.

26 Sec. 80.020. AUTHORITY TO PROHIBIT PLANTING OF CITRUS AND  
27 REQUIRE PARTICIPATION IN SUPPRESSION PROGRAM. (a) The



1 commissioner may adopt reasonable rules regarding areas where  
2 citrus may not be planted in a pest management zone if there is  
3 reason to believe planting will jeopardize the success of the  
4 program or present a hazard to public health or safety.

5 (b) The commissioner may adopt rules requiring all growers  
6 of citrus in a pest management zone to participate in an Asian  
7 citrus psyllid suppression program and growers of commercial citrus  
8 to participate in pest and disease management programs that include  
9 cost sharing as required by the rules.

10 (c) Notice of a prohibition or requirement shall be given by  
11 publication for one day each week for three successive weeks in a  
12 newspaper having general circulation in the affected area.

13 (d) The commissioner may adopt a reasonable schedule of  
14 penalty fees to be assessed against growers in a designated pest  
15 management zone who do not meet the requirements of the rules issued  
16 by the commissioner relating to reporting of acreage and  
17 participation in cost sharing. A penalty fee may not exceed \$50 per  
18 acre.

19 Sec. 80.021. AUTHORITY FOR DESTRUCTION OR TREATMENT OF  
20 CITRUS IN PEST MANAGEMENT ZONES; COMPENSATION PAYABLE. The  
21 department may destroy or treat, and establish procedures for the  
22 purchase and destruction of, citrus plants or hosts in pest  
23 management zones if the department determines the action is  
24 necessary to carry out the purposes of this chapter. The department  
25 is not liable to the owner or lessee for the destruction of or  
26 injury to any citrus that was planted in a pest management zone  
27 after the date notice is published as required by this chapter. The

1 corporation is liable for the destruction of citrus if the citrus  
2 was planted in a pest management zone before the date that notice is  
3 published.

4 Sec. 80.022. AUTHORITY TO ADOPT RULES. (a) The  
5 commissioner shall adopt rules to protect individuals, livestock,  
6 wildlife, and honeybee colonies on any premises in a pest  
7 management zone on which citrus plants are being grown that have  
8 been or are being treated to control or suppress the Asian citrus  
9 psyllid and citrus greening.

10 (b) Rules adopted under this section shall establish the  
11 criteria by which the corporation develops its procedures and  
12 methods of treatment, which shall:

13 (1) establish a methodology for determining when Asian  
14 citrus psyllid population levels have reached economic  
15 significance or when citrus greening is present;

16 (2) establish an effective treatment regimen that  
17 seeks to provide the least possible risk to workers, the public, and  
18 the environment;

19 (3) minimize the effects of the use of pesticides on  
20 long-term control methods, including but not limited to the effect  
21 a particular pesticide may have on biological controls;

22 (4) establish methods for monitoring Asian citrus  
23 psyllids, citrus greening, and secondary pests;

24 (5) establish methods for verifying pesticide use  
25 reduction; and

26 (6) consider the acute and chronic toxicity of  
27 particular pesticides and the quantity of particular pesticides

1 needed. Pest management zone treatment plans may take into account  
2 the potential for the use of smaller quantities of more toxic  
3 substances to result in fewer health and environmental risks than  
4 larger quantities of less toxic substances.

5 (c) The commissioner may adopt other reasonable rules  
6 necessary to carry out the purposes of this chapter. All rules  
7 issued under this chapter must be adopted and published in  
8 accordance with the laws of this state.

9 (d) An advisory committee may be established to assist the  
10 commissioner in the development of rules under this section. The  
11 advisory committee may be composed of:

12 (1) three citrus producers from the commercial citrus  
13 growing area of the state, appointed by the commissioner;

14 (2) three entomologists with knowledge of the  
15 principles of integrated pest management, at least one of whom has  
16 special knowledge of nonchemical or biological pest control,  
17 appointed by the commissioner;

18 (3) two individuals with experience representing the  
19 general interests of the environment, appointed by the chair of the  
20 Texas Commission on Environmental Quality;

21 (4) an environmental engineer with expert knowledge of  
22 ground and surface water protection from contamination, appointed  
23 by the chair of the Texas Commission on Environmental Quality;

24 (5) a toxicologist, appointed by the commissioner of  
25 state health services; and

26 (6) an individual with experience representing the  
27 general interests of consumers and an individual with experience

1 representing the general interests of agricultural workers,  
2 appointed by the governor.

3 Sec. 80.023. REPORTS. Each person in an active pest  
4 management zone growing citrus in this state shall furnish to the  
5 corporation on forms supplied by the corporation information that  
6 the corporation requires concerning the size and location of all  
7 commercial citrus orchards and of noncommercial citrus grown for  
8 ornamental or other purposes. The corporation may provide an  
9 incentive for early and timely reporting.

10 Sec. 80.024. DOCUMENTING REGULATED ARTICLES. To implement  
11 this chapter, the department may issue or authorize issuance of:

12 (1) a certificate that indicates that a regulated  
13 article is not infested with the Asian citrus psyllid; and

14 (2) a permit that provides for the movement of a  
15 regulated article to a restricted destination for limited handling,  
16 use, or processing.

17 Sec. 80.025. COOPERATIVE PROGRAMS AUTHORIZED. (a) The  
18 corporation may carry out programs to destroy and manage the Asian  
19 citrus psyllid and citrus greening in this state by cooperating  
20 through written agreements, as approved by the commissioner, with:

21 (1) an agency of the federal government;

22 (2) a state agency;

23 (3) an appropriate agency of a foreign country  
24 contiguous to the affected area to the extent allowed by federal  
25 law;

26 (4) a person who is engaged in growing, processing,  
27 marketing, or handling citrus;

1           (5) a group of persons in this state involved in  
2 similar programs to carry out the purposes of this chapter; or

3           (6) an appropriate state agency of another state  
4 contiguous to the affected area, to the extent allowed by federal  
5 law, the law of the contiguous state, and the law of this state.

6           (b) An agreement entered into under this section may provide  
7 for cost sharing and for division of duties and responsibilities  
8 under this chapter and may include other provisions to carry out the  
9 purposes of this chapter.

10           Sec. 80.026. ORGANIC CITRUS PRODUCERS. (a) The  
11 commissioner shall develop rules and procedures to:

12           (1) protect the eligibility of organic citrus  
13 producers to be certified by the commissioner;

14           (2) ensure that organic and transitional  
15 certifications by the commissioner continue to meet national  
16 certification standards in order for organic citrus to maintain  
17 international marketability; and

18           (3) in all events maintain the effectiveness of the  
19 Asian citrus psyllid suppression program and citrus greening  
20 management administered under this chapter.

21           (b) The board may not treat or require treatment of organic  
22 citrus groves with chemicals that are not approved for use on  
23 certified organic citrus. Rules adopted under Subsection (a) may  
24 provide indemnity for the organic citrus producers for reasonable  
25 losses that result from a prohibition of production of organic  
26 citrus or from any requirement of destruction of organic citrus.

27           Sec. 80.027. PENALTIES. (a) A person who violates this

1 chapter or a rule adopted under this chapter or who alters, forges,  
2 counterfeits, or uses without authority a certificate, permit, or  
3 other document issued under this chapter or under a rule adopted  
4 under this chapter commits an offense.

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

6 (c) If the commissioner determines that a violation of this  
7 chapter or a rule adopted under this chapter has occurred, the  
8 commissioner may request that the attorney general or the county or  
9 district attorney of the county in which the alleged violation  
10 occurred or is occurring file suit for civil, injunctive, or other  
11 appropriate relief.

12 Sec. 80.028. SUNSET PROVISION. (a) The board of directors  
13 of the official citrus producers' pest and disease management  
14 corporation is subject to Chapter 325, Government Code (Texas  
15 Sunset Act). Unless continued in existence as provided by that  
16 chapter, the board is abolished and this chapter expires September  
17 1, 2021.

18 (b) The commissioner may order the dissolution of the  
19 corporation at any time the commissioner determines that the  
20 purposes of this chapter have been fulfilled or that the  
21 corporation is inoperative and abandoned. Dissolution shall be  
22 conducted in accordance with Section 80.014.

23 (c) If the corporation is abolished or the suppression  
24 program discontinued for any reason, assessments approved, levied,  
25 or otherwise collectible on the date of abolishment remain valid as  
26 necessary to pay the financial obligations of the corporation.

27 Sec. 80.029. ANNUAL REPORT. The board shall issue to the

1 commissioner and the appropriate oversight committee in the house  
2 of representatives an annual report detailing its efforts to carry  
3 out the purposes of this chapter.

4 Sec. 80.030. EXEMPTION TAXATION. All payments,  
5 contributions, funds, and assessments received or held by the  
6 corporation under this chapter are exempt from state or local  
7 taxation, levies, sales, and any other process and are  
8 unassignable.

9 Sec. 80.031. USE OF BIO-INTENSIVE CONTROLS. (a) The  
10 commissioner shall develop and adopt rules to allow a citrus  
11 producer in a suppression program to use biological, botanical, or  
12 other nonsynthetic pest control methods. In developing rules, the  
13 commissioner shall consider:

14 (1) scientific studies and field trials of the  
15 effectiveness of a proposed alternative control method;

16 (2) the feasibility of using a proposed alternative  
17 control technique within a particular region;

18 (3) the degree of monitoring necessary to establish  
19 the success of the use of a proposed alternative control; and

20 (4) methods to prevent the use of substances that  
21 would impede the use of alternative controls and the promotion of  
22 beneficial insect populations.

23 (b) A citrus producer that chooses to use an alternative  
24 method of control as provided in Subsection (a) shall notify the  
25 board. The board and the citrus producer shall coordinate their  
26 actions to prevent the use of substances that would impede the use  
27 of alternative controls and the promotion of beneficial insect

1 populations.

2 (c) The citrus producer shall pay any additional cost of  
3 bio-intensive control in addition to any assessment.

4 Sec. 80.032. VENUE. Venue for an action arising out of this  
5 chapter in which the corporation is a party is in Travis County.

6 SECTION 2. This Act takes effect September 1, 2009.