

By: Martinez

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) Advisory committees appointed under this section are
3 immune from lawsuits and liability to the same extent the
4 corporation is immune from lawsuits and liability under Section
5 80.032.

6 (e) An advisory committee established under this section is
7 subject to Chapters 551 and 552, Government Code.

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

11 (b) The commissioner may hold a public hearing in the
12 proposed pest management zone to discuss the proposed geographic
13 boundaries of the zone. The public hearing may include any other
14 topic allowed under this chapter.

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

17 Sec. 80.006. PEST MANAGEMENT ZONE REFERENDA. (a) The
18 commissioner shall conduct a referendum in each proposed pest
19 management zone to determine whether citrus producers want to
20 establish a pest management zone.

21 (b) Pest management zone referenda shall be conducted under
22 the procedures provided by Section 80.018.

23 (c) A proposed pest management zone referendum ballot must
24 include or be accompanied by information about the proposed pest
25 management zone, including:

26 (1) a statement of the purpose of the Asian citrus
27 psyllid suppression program;

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

3 (3) a general summary of rules adopted by the
4 commissioner under Sections 80.018, 80.022, and 80.024, including a
5 description of:

6 (A) citrus producer responsibilities; and

7 (B) penalties for noncompliance with rules
8 adopted under this chapter; and

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

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

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

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

1 Sec. 80.007. BOARD ELECTIONS. (a) The initial election for
2 board members from a proposed pest management zone shall be held
3 concurrently with a pest management zone referendum held under
4 Section 80.006. Each pest management zone must be represented on
5 the board and remain represented on the board until suppression
6 operations are concluded and all debt of the pest management zone is
7 paid.

8 (b) A board election shall be conducted under the procedures
9 provided by this section and Section 80.018.

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

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

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

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

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

23 (e) On receipt of an application and verification that the
24 application meets the requirements of Subsection (d), an
25 applicant's name shall be placed on the ballot for the board
26 election.

27 (f) An eligible voter may vote for a citrus producer whose

1 name does not appear on the official ballot by writing that person's
2 name on the ballot.

3 (g) A board election must be preceded by at least 45 days'
4 notice published in one or more newspapers published and
5 distributed in the proposed or established pest management zone.
6 The notice shall be published not less than once a week for three
7 consecutive weeks. Not later than the 45th day before the date of
8 the election, direct written notice of the election shall be given
9 to each AgriLife Extension agent in the pest management zone.

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

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

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

25 (1) an agricultural lender;

26 (2) an independent entomologist who is an integrated
27 pest management specialist;

1 (3) two representatives from industries allied with
2 citrus production; and

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

4 (c) The commissioner may change the number of board
5 positions or the pest management zone representation on the board
6 to accommodate changes in the number of pest management zones. A
7 change under this subsection may not contravene another provision
8 of this chapter.

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

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

14 Sec. 80.009. POWERS OF BOARD AND COMMISSIONER. (a) The
15 board may:

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

18 (2) accept, as necessary to implement this chapter,
19 gifts and grants;

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

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

26 (5) form an advisory committee composed of individuals
27 from this state, other states, or other countries and change

1 membership on the committee, as necessary. Any advisory committee
2 created under this subdivision for the purpose of establishing
3 treatment methods shall include among its members persons with
4 knowledge of the effects of different treatments on the health of
5 agricultural workers, the local population, and the ecosystem,
6 including but not limited to the effects of a particular method of
7 treatment on beneficial organisms and wildlife, the potential for
8 secondary infestations from nontarget pests, and the potential for
9 pest resistance to particular methods of treatment.

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

15 (1) citrus production has begun or could begin in the
16 area;

17 (2) the area is adjacent to a pest management zone or
18 is in an area with biological characteristics similar to the pest
19 management zone; and

20 (3) the addition is approved in a referendum held in
21 the area.

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

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

27 Sec. 80.010. BOARD DUTIES. (a) The board shall have an

1 annual independent audit of the books, records of account, and
2 minutes of proceedings maintained by the corporation prepared by an
3 independent certified public accountant or a firm of independent
4 certified public accountants. The audit must include information
5 for each zone in which a suppression program has been conducted
6 under this chapter. The audit shall be filed with the board, the
7 commissioner, and the state auditor and be made available to the
8 public by the corporation or the commissioner. The state auditor
9 may examine any work papers from the independent audit or may audit
10 the transactions of the corporation if the state auditor determines
11 that an audit is necessary.

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

16 (c) The corporation shall provide fidelity bonds in amounts
17 determined by the board for employees or agents who handle money for
18 the corporation.

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

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

23 (2) exemption from vehicle registration fees; and

24 (3) indemnification under Chapter 104, Civil Practice
25 and Remedies Code.

26 (e) Funds collected by the corporation are not state funds
27 and are not required to be deposited in the state treasury. The

1 corporation shall deposit all money collected under this chapter in
2 a bank or other depository approved by the commissioner.

3 (f) The corporation is a governmental unit under Section
4 101.001, Civil Practice and Remedies Code, and is entitled to
5 governmental immunity. A tort claim against the corporation must
6 be made under Chapter 101, Civil Practice and Remedies Code.

7 (g) The board shall collect data on the type and quantity of
8 pesticides used in accordance with this chapter. The data shall be
9 filed with the commissioner.

10 (h) All money collected under this chapter shall be used
11 solely to finance programs approved by the commissioner as
12 consistent with this chapter.

13 (i) The corporation is subject to the requirements of:

14 (1) the open meetings law, Chapter 551, Government
15 Code; and

16 (2) the public information law, Chapter 552,
17 Government Code.

18 (j) A board member may not vote on any matter in which the
19 member has a direct pecuniary interest. A board member is subject to
20 the same restrictions as a local public official under Chapter 171,
21 Local Government Code.

22 Sec. 80.011. ADMINISTRATIVE REVIEW. (a) The commissioner
23 by rule shall establish procedures for the informal review and
24 resolution of a claim arising out of certain acts taken by the
25 corporation under this chapter. Rules established under this
26 section shall include a designation of the acts that are subject to
27 review under this subsection and the appropriate remedial action,

1 as authorized by this chapter.

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

5 (c) A decision issued by the commissioner on a claim
6 appealed under Subsection (b) is the final administrative action of
7 the department and is subject to judicial review under Chapter
8 2001, Government Code.

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

11 Sec. 80.012. LIABILITY OF CORPORATION MEMBERS, OFFICERS,
12 AND EMPLOYEES. (a) Except for instances of gross negligence,
13 individual criminal actions, or acts of dishonesty, the
14 corporation's members, directors, officers, and employees are not
15 individually liable to a citrus producer or other person for:

16 (1) errors in judgment;

17 (2) mistakes; or

18 (3) other acts or omissions.

19 (b) A corporation member, officer, or employee is not
20 individually liable for an act or omission of another corporation
21 member, officer, or employee.

22 Sec. 80.013. LIABILITY OF APPLICATORS. (a) In this
23 section, "applicator" means an individual or other person who is
24 not a member, director, officer, or employee of the corporation and
25 that contracts with the corporation to apply pesticides or other
26 chemicals using aircraft or other equipment to further or support
27 the control and suppression efforts undertaken under this chapter.

1 (b) An applicator is not jointly and severally liable for
2 any act or omission of the corporation under this chapter.

3 (c) The corporation shall have liability coverage in effect
4 for any control or suppression efforts for which it uses
5 applicators. The coverage must apply to acts and omissions of the
6 corporation and volunteers and be in the amount of at least \$500,000
7 for each single occurrence of death, bodily injury, or property
8 damage.

9 Sec. 80.014. CONTRACTING. (a) For a purchase of goods and
10 services under this chapter, the corporation may purchase goods and
11 services that provide the best value for the corporation.

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

16 (1) the quality and reliability of the goods and
17 services;

18 (2) the delivery terms;

19 (3) indicators of probable vendor performance under
20 the contract, including:

21 (A) past vendor performance;

22 (B) the vendor's financial resources and ability
23 to perform;

24 (C) the vendor's experience or demonstrated
25 capability and responsibility; and

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

1 (4) the cost of any employee training associated with
2 a purchase; and

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

5 Sec. 80.015. BOARD MEMBER COMPENSATION. Board members
6 serve without compensation but are entitled to reimbursement for
7 reasonable and necessary expenses incurred in the discharge of
8 their duties.

9 Sec. 80.016. DISCONTINUATION OF PROGRAM AND CORPORATION AND
10 DISPOSITION OF FUNDS ON DISCONTINUANCE. (a) On the determination
11 by the corporation that the Asian citrus psyllid suppression
12 program has been completed in all pest management zones established
13 under this chapter, the corporation shall provide notice of the
14 completion to the commissioner along with a request for
15 discontinuance of the control and suppression program and
16 collection of the assessment. Any request under this subsection
17 must include documentation supporting the fact that the Asian
18 citrus psyllid is no longer a threat to the state's citrus industry
19 and a plan for discontinuance of the program and assessment.

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

24 (c) On completion of the dissolution, the corporation shall
25 file a final report with the commissioner, including a financial
26 report, and submit all remaining funds into the trust of the
27 commissioner. Final books of the corporation shall be filed with

1 the commissioner and are subject to audit by the department.

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

4 (e) Funds remaining after payment under Subsection (d)
5 shall be returned to contributing citrus producers on a pro rata
6 basis.

7 (f) If 30 percent or more of the citrus producers eligible
8 to vote within a zone participating in the program present to the
9 commissioner a petition calling for a referendum of the qualified
10 voters on the proposition of discontinuing the program, the
11 commissioner shall conduct a referendum for that purpose.

12 (g) The commissioner shall give notice of the referendum,
13 the referendum shall be conducted, and the results shall be
14 declared in the manner provided by law for the original referendum
15 and election, with any necessary exceptions provided by rule of the
16 commissioner.

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

22 (i) Approval of the proposition requires the same vote as
23 required in a referendum under Section 80.018(g). If the
24 proposition is approved, the suppression program is abolished and
25 the pest management zone ceases to exist on payment of all debts of
26 the pest management zone.

27 Sec. 80.017. ASSESSMENT REFERENDA. (a) The commissioner

1 shall propose the assessment needed in each pest management zone to
2 ensure the stability of the citrus industry by suppressing the
3 public nuisance caused by the Asian citrus psyllid.

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

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

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

8 (c) With the commissioner's approval, the corporation may
9 make an assessment in a pest management zone at a level less than
10 the assessment approved by the referendum.

11 (d) The commissioner shall conduct an assessment referendum
12 under the procedures provided by Section 80.018.

13 (e) If an assessment referendum is approved, the
14 corporation may collect the assessment.

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

17 (1) pest control in that zone;

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

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

24 (g) The assessment shall be adequate and necessary to
25 achieve the goals of this chapter. The amount of the assessment
26 shall be determined by criteria established by the commissioner,
27 including:

- 1 (1) the extent of infestation;
- 2 (2) the amount of acreage planted;
- 3 (3) historical efforts to suppress;
- 4 (4) the growing season;
- 5 (5) epidemiology;
- 6 (6) historical weather conditions; and
- 7 (7) the costs and financing of the program.

8 (h) The commissioner shall give notice of and hold a public
9 hearing in the pest management zone regarding the proposed
10 assessment referendum. Before the referendum, the commissioner
11 shall review and approve:

- 12 (1) the amount of the assessment;
- 13 (2) the basis for the assessment;
- 14 (3) the time for payment of the assessment;
- 15 (4) the method of allocation of the assessment among
16 citrus producers;
- 17 (5) the restructuring and repayment schedule for any
18 preexisting debt; and
- 19 (6) the amount of debt to be incurred in the pest
20 management zone.

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

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

25 (k) The corporation shall prepare and mail billing
26 statements to each citrus producer subject to the assessment that
27 state the amount due and the due date. The assessments shall be

1 sent to the corporation.

2 Sec. 80.018. CONDUCT OF BOARD ELECTIONS AND REFERENDA;
3 BALLOTING. (a) The commissioner shall conduct a referendum or
4 board election authorized under this chapter.

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

7 (c) The commissioner shall adopt rules for voting in board
8 elections and referenda to establish pest management zones. Rules
9 adopted under this subsection must include provisions for
10 determining:

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

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

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

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

18 (1) vote in a referendum concerning the pest
19 management zone; and

20 (2) elect board members to represent the pest
21 management zone.

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

24 (f) Ballots in a referendum or board election shall be
25 mailed directly to a central location, as determined by the
26 commissioner. A citrus producer eligible to vote in a referendum or
27 board election who has not received a ballot from the commissioner,

1 corporation, or another source shall be offered the option of
2 requesting a ballot by mail or obtaining a ballot at the office of
3 Texas AgriLife Extension or a government office distributing
4 ballots in a county in the proposed or established zone in which the
5 referendum or board election is conducted.

6 (g) A referendum is approved if:

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

9 (2) those voting in favor of the referendum cultivate
10 more than 50 percent, as determined by the commissioner, of the
11 citrus acreage in the relevant pest management zone.

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

16 (i) A public hearing regarding the proposed suppression
17 program, including information regarding regulations to be
18 promulgated by the commissioner, may be held by the commissioner in
19 each of several locations in each Asian citrus psyllid pest
20 management zone.

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

25 Sec. 80.019. PAYMENT OF ASSESSMENTS; ASSESSMENT LIENS. (a)
26 A citrus producer who fails to pay an assessment levied under this
27 chapter when due may be subject, after reasonable notice and

1 opportunity for hearing, to a penalty set by the commissioner. In
2 determining the amount of the penalty to be assessed, the
3 commissioner shall consider:

4 (1) the seriousness of the violation, including the
5 nature, circumstances, and extent of the violation;

6 (2) the history of previous violations;

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

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

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

10 (b) The corporation may develop a compliance certificate
11 program to manage the payment and collection of an assessment
12 levied under this chapter. Under the program the corporation,
13 subject to department rules, may issue a compliance certificate for
14 citrus for which an assessment has been paid.

15 (c) In addition to any other remedies for the collection of
16 assessments and penalties, the commissioner may adopt rules
17 relating to the compliance certificate program for suppression
18 assessments. The rules may include:

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

23 (2) provisions allowing incentives in the form of
24 discounted assessments for growers who pay assessments within a
25 prescribed time period;

26 (3) provisions establishing penalties and interest
27 against growers who pay assessments after a prescribed time period;

1 and

2 (4) other provisions the commissioner determines are
3 proper.

4 (d) In addition to any other remedies for the collection of
5 assessments and penalties, an assessment lien in favor of the
6 corporation attaches and is perfected 60 days after the date the
7 corporation mails notice of the assessment on citrus produced and
8 harvested that year from the acreage that is subject to the
9 assessment that is due and unpaid. An assessment lien is not an
10 agricultural lien for the purposes of Chapter 9, Business &
11 Commerce Code, and is not subject to the provisions of that chapter.
12 An assessment lien is subject to and preempted by the Food Security
13 Act of 1985 (7 U.S.C. Section 1631 et seq.) and shall be treated
14 under that Act in the same manner as a security interest created by
15 the seller. A buyer of citrus takes free of the assessment lien if
16 the buyer:

17 (1) receives a compliance certificate issued by the
18 corporation when the buyer purchases the citrus that certifies that
19 the assessment has been paid to the corporation;

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

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

25 (4) buys the citrus from a person other than the
26 producer of the citrus.

27 (e) The corporation may assign, with the approval of the

1 commissioner, assessments or liens in favor of the corporation as
2 collateral for a loan to the corporation only if the proceeds of the
3 loan are designated for use in the pest management zone from which
4 the assessments or liens originated.

5 (f) If the department believes that a violation of this
6 section or a rule adopted under this section has occurred, the
7 department may investigate and, during normal business hours, audit
8 and inspect the records of the person who is the subject of the
9 investigation.

10 Sec. 80.020. EXEMPTION FROM ASSESSMENT PENALTIES. (a) The
11 commissioner by rule shall adopt criteria to exempt from payment of
12 an assessment penalty under Section 80.019 a citrus producer for
13 whom payment would impose an undue financial burden.

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

19 (c) A citrus producer who applies for an exemption under
20 this section must use a form prescribed by the commissioner. A
21 citrus producer must file a separate application form for each year
22 for which the citrus producer claims an exemption.

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

25 (e) The commissioner shall promptly notify an applicant of
26 the determination regarding the applicant's request for an
27 exemption.

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

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

6 (2) 30 days after the date the applicant receives
7 notice of the denial.

8 (g) In addition to the authority provided under Subsections
9 (a)-(f), the commissioner may reduce or waive an assessment penalty
10 as appropriate and necessary.

11 Sec. 80.021. ENTRY OF PREMISES; SUPPRESSION ACTIVITIES;
12 INSPECTIONS. The department, the corporation, or a designated
13 representative of either entity may enter citrus groves or other
14 premises to carry out the purposes of this chapter, which include
15 the treatment and monitoring of growing citrus or other host
16 plants. The department, the corporation, or a designated
17 representative of either entity may inspect groves or premises in
18 this state for the purpose of determining whether the property is
19 infested with the Asian citrus psyllid or citrus greening. An
20 inspection must be conducted during reasonable daylight hours. The
21 department shall give notice by publication of the planned schedule
22 of dates for entry by the department, the corporation, or a
23 designated representative of either entity, to the owner or
24 occupant of the groves or premises to carry out the purposes of this
25 chapter, including treatment, monitoring, or inspection functions.
26 The department shall publish notice of the planned schedule to
27 enter the groves or premises in a newspaper of general circulation

1 in the pest management zone not less than once a week for two weeks
2 immediately before the scheduled dates of entry. In addition to the
3 notice published by the department, the corporation shall post
4 notice of the planned schedule to enter groves or premises to carry
5 out the purposes of this chapter at the county courthouse of each
6 county in the pest management zone not later than the 15th day
7 before the planned dates of entry.

8 Sec. 80.022. AUTHORITY TO PROHIBIT PLANTING OF CITRUS AND
9 REQUIRE PARTICIPATION IN SUPPRESSION PROGRAM. (a) The
10 commissioner may adopt reasonable rules regarding areas where
11 citrus may not be planted in a pest management zone if there is
12 reason to believe planting will jeopardize the success of the
13 program or present a hazard to public health or safety.

14 (b) The commissioner may adopt rules requiring all growers
15 of citrus in a pest management zone to participate in an Asian
16 citrus psyllid suppression program and growers of commercial citrus
17 to participate in pest and disease management programs that include
18 cost sharing as required by the rules.

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

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

1 Sec. 80.023. AUTHORITY FOR DESTRUCTION OR TREATMENT OF
2 CITRUS IN PEST MANAGEMENT ZONES; COMPENSATION PAYABLE. The
3 department may destroy or treat, and establish procedures for the
4 purchase and destruction of, citrus plants or hosts in pest
5 management zones if the department determines the action is
6 necessary to carry out the purposes of this chapter. The department
7 is not liable to the owner or lessee for the destruction of or
8 injury to any citrus that was planted in a pest management zone
9 after the date notice is published as required by this chapter. The
10 corporation is liable for the destruction of citrus if the citrus
11 was planted in a pest management zone before the date that notice is
12 published.

13 Sec. 80.024. AUTHORITY TO ADOPT RULES. (a) The
14 commissioner shall adopt rules to protect individuals, livestock,
15 wildlife, and honeybee colonies on any premises in a pest
16 management zone on which citrus plants are being grown that have
17 been or are being treated to control or suppress the Asian citrus
18 psyllid and citrus greening.

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

22 (1) establish a methodology for determining when Asian
23 citrus psyllid population levels have reached economic
24 significance or when citrus greening is present;

25 (2) establish an effective treatment regimen that
26 seeks to provide the least possible risk to workers, the public, and
27 the environment;

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

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

6 (5) establish methods for verifying pesticide use
7 reduction; and

8 (6) consider the acute and chronic toxicity of
9 particular pesticides and the quantity of particular pesticides
10 needed. Pest management zone treatment plans may take into account
11 the potential for the use of smaller quantities of more toxic
12 substances to result in fewer health and environmental risks than
13 larger quantities of less toxic substances.

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

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

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

23 (2) three entomologists with knowledge of the
24 principles of integrated pest management, at least one of whom has
25 special knowledge of nonchemical or biological pest control,
26 appointed by the commissioner;

27 (3) two individuals with experience representing the

1 general interests of the environment, appointed by the chair of the
2 Texas Commission on Environmental Quality;

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

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

8 (6) an individual with experience representing the
9 general interests of consumers and an individual with experience
10 representing the general interests of agricultural workers,
11 appointed by the governor.

12 Sec. 80.025. REPORTS. Each person in an active pest
13 management zone growing citrus in this state shall furnish to the
14 corporation on forms supplied by the corporation information that
15 the corporation requires concerning the size and location of all
16 commercial citrus orchards and of noncommercial citrus grown for
17 ornamental or other purposes. The corporation may provide an
18 incentive for early and timely reporting.

19 Sec. 80.026. DOCUMENTING REGULATED ARTICLES. To implement
20 this chapter, the department may issue or authorize issuance of:

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

23 (2) a permit that provides for the movement of a
24 regulated article to a restricted destination for limited handling,
25 use, or processing.

26 Sec. 80.027. COOPERATIVE PROGRAMS AUTHORIZED. (a) The
27 corporation may carry out programs to destroy and manage the Asian

1 citrus psyllid and citrus greening in this state by cooperating
2 through written agreements, as approved by the commissioner, with:

3 (1) an agency of the federal government;

4 (2) a state agency;

5 (3) an appropriate agency of a foreign country
6 contiguous to the affected area to the extent allowed by federal
7 law;

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

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

12 (6) an appropriate state agency of another state
13 contiguous to the affected area, to the extent allowed by federal
14 law, the law of the contiguous state, and the law of this state.

15 (b) An agreement entered into under this section may provide
16 for cost sharing and for division of duties and responsibilities
17 under this chapter and may include other provisions to carry out the
18 purposes of this chapter.

19 Sec. 80.028. ORGANIC CITRUS PRODUCERS. (a) The
20 commissioner shall develop rules and procedures to:

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

23 (2) ensure that organic and transitional
24 certifications by the commissioner continue to meet national
25 certification standards in order for organic citrus to maintain
26 international marketability; and

27 (3) in all events maintain the effectiveness of the

1 Asian citrus psyllid suppression program and citrus greening
2 management administered under this chapter.

3 (b) The board may not treat or require treatment of organic
4 citrus groves with chemicals that are not approved for use on
5 certified organic citrus. Rules adopted under Subsection (a) may
6 provide indemnity for the organic citrus producers for reasonable
7 losses that result from a prohibition of production of organic
8 citrus or from any requirement of destruction of organic citrus.

9 Sec. 80.029. PENALTIES. (a) A person who violates this
10 chapter or a rule adopted under this chapter or who alters, forges,
11 counterfeits, or uses without authority a certificate, permit, or
12 other document issued under this chapter or under a rule adopted
13 under this chapter commits an offense.

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

15 (c) If the commissioner determines that a violation of this
16 chapter or a rule adopted under this chapter has occurred, the
17 commissioner may request that the attorney general or the county or
18 district attorney of the county in which the alleged violation
19 occurred or is occurring file suit for civil, injunctive, or other
20 appropriate relief.

21 Sec. 80.030. SUNSET PROVISION. (a) The board of directors
22 of the official citrus producers' pest and disease management
23 corporation is subject to Chapter 325, Government Code (Texas
24 Sunset Act). Unless continued in existence as provided by that
25 chapter, the board is abolished and this chapter expires September
26 1, 2021.

27 (b) The commissioner may order the dissolution of the

1 corporation at any time the commissioner determines that the
2 purposes of this chapter have been fulfilled or that the
3 corporation is inoperative and abandoned. Dissolution shall be
4 conducted in accordance with Section 80.016.

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

9 Sec. 80.031. ANNUAL REPORT. The board shall issue to the
10 commissioner and the appropriate oversight committee in the house
11 of representatives an annual report detailing its efforts to carry
12 out the purposes of this chapter.

13 Sec. 80.032. EXEMPTION FROM LAWSUITS, LIABILITY, TAXATION,
14 AND LEGAL PROCESS. The legislature recognizes that the
15 corporation, acting under the supervision and control of the
16 commissioner, is carrying out an important governmental function
17 and that therefore the corporation, as a quasi-governmental entity,
18 must be immune from lawsuits and liability except to the extent
19 provided in Chapter 101, Civil Practice and Remedies Code, and as
20 provided by this section. Therefore, no claims may be brought or
21 continued against the corporation except claims allowed by Chapter
22 101, Civil Practice and Remedies Code. With the exception of
23 finally adjudicated claims allowed by Chapter 101, Civil Practice
24 and Remedies Code, all payments, contributions, funds, and
25 assessments received or held by the foundation under this chapter
26 are exempt from garnishment, attachment, execution, or other
27 seizure and from state or local taxation, levies, sales, and any

1 other process and are unassignable. Nothing in this section
2 affects or impairs any existing or future indebtedness or any
3 existing or future security interest created under a note, security
4 agreement, assignment, or other loan agreement between the
5 corporation and a lender or any judgment, to the extent the judgment
6 allows recovery against the corporation pursuant to a note,
7 security agreement, loan agreement, or other document.

8 Sec. 80.033. USE OF BIO-INTENSIVE CONTROLS. (a) The
9 commissioner shall develop and adopt rules to allow a citrus
10 producer in a suppression program to use biological, botanical, or
11 other nonsynthetic pest control methods. In developing rules, the
12 commissioner shall consider:

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

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

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

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

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

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

3 Sec. 80.034. VENUE. (a) Venue for an action arising out of
4 this chapter in which the corporation is a party is in Travis
5 County.

6 (b) This section does not expand the liability of the
7 corporation beyond the liability provided under Section 80.032.

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