

By: Estes, Hegar

S.B. No. 1016

A BILL TO BE ENTITLED

AN ACT

relating to the continuation and functions of the Department of Agriculture and the Prescribed Burning Board and the abolition of the Texas-Israel Exchange Fund Board; providing penalties.

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

ARTICLE 1. TEXAS AGRICULTURAL FINANCE AUTHORITY

SECTION 1.01. Subdivisions (1) and (2), Section 44.001, Agriculture Code, are amended to read as follows:

(1) "Eligible lending institution" means a financial institution that makes commercial loans, is either a depository of state funds or an institution of the Farm Credit System headquartered in this state, and agrees to participate in the interest rate reduction ~~[linked deposit]~~ program and to provide collateral equal to the amount of linked deposits placed with it.

(2) "Eligible borrower" means a person who proposes to use the proceeds of a loan under this chapter in a manner that will help accomplish the state's goal of fostering the creation and expansion of enterprises based on agriculture in this state ~~[is in the business or entering the business of:~~

~~[(A) processing and marketing agricultural crops in this state,~~

~~[(B) producing alternative agricultural crops in this state,~~

~~[(C) producing agricultural crops in this state~~

~~the production of which has declined because of natural disasters,
[(D) producing agricultural crops in this state
using water conservation equipment for agricultural production
purposes; or~~

~~[(E) providing nonagricultural goods or services
that provide an economic benefit to a municipality or county in a
rural area].~~

SECTION 1.02. The heading to Section 44.007, Agriculture Code, is amended to read as follows:

Sec. 44.007. INTEREST RATE REDUCTION ~~[LINKED DEPOSIT]~~ PROGRAM.

SECTION 1.03. Subsections (a), (c), (d), (k), and (l), Section 44.007, Agriculture Code, are amended to read as follows:

(a) The board shall establish an interest rate reduction ~~[a linked deposit]~~ program to foster the creation and expansion of enterprises based on agriculture in this state ~~+~~

~~[(1) encourage commercial lending for the enhanced
production, processing, and marketing of certain agricultural
crops;~~

~~[(2) encourage the development or expansion of
businesses in rural areas of this state; and~~

~~[(3) finance water conservation projects or equipment
for agricultural production purposes].~~

(c) The board shall promulgate rules for the loan portion of the interest rate reduction ~~[linked deposit]~~ program. ~~[The rules must include:~~

~~[(1) a list of the categories of crops customarily~~

1 ~~grown in Texas, with consideration given to the Texas Agricultural~~
2 ~~Statistics Service information available and relevant to this~~
3 ~~determination,~~

4 ~~[(2) a list of crops that are alternative agricultural~~
5 ~~crops, with consideration given to the Texas Agricultural~~
6 ~~Statistics Service information available and relevant to this~~
7 ~~determination,~~

8 ~~[(3) identification of criteria for a project eligible~~
9 ~~for natural disaster assistance; and~~

10 ~~[(4) identification of projects and types of equipment~~
11 ~~considered as water conservation projects or equipment for~~
12 ~~agricultural production purposes.]~~

13 (d) In order to participate in the interest rate reduction
14 ~~[linked deposit]~~ program, an eligible lending institution may
15 solicit loan applications from eligible borrowers.

16 (k) The board may adopt rules that create a procedure for
17 determining priorities for loans granted under this chapter. Each
18 rule adopted must state the policy objective of the rule. ~~[The~~
19 ~~policy objectives of the rules may include preferences to:~~

20 ~~[(1) achieve adequate geographic distribution of~~
21 ~~loans,~~

22 ~~[(2) assist certain industries,~~

23 ~~[(3) encourage certain practices including water~~
24 ~~conservation; and~~

25 ~~[(4) encourage value-added processing of agricultural~~
26 ~~products.]~~

27 (l) A lending institution is not ineligible to participate

1 in the interest rate reduction [~~linked deposit~~] program solely
2 because a member of the board is also an officer, director, or
3 employee of the lending institution, provided that a board member
4 shall recuse himself or herself from any action taken by the board
5 on an application involving a lending institution by which the
6 board member is employed or for which the board member serves as an
7 officer or director.

8 SECTION 1.04. Subsections (a) and (b), Section 44.010,
9 Agriculture Code, are amended to read as follows:

10 (a) At any one time, not more than \$30 million[~~, \$10 million~~
11 ~~of which may be used only to finance water conservation projects and~~
12 ~~\$5 million of which may be used only to finance the economic~~
13 ~~development of businesses in rural areas,~~] may be placed in linked
14 deposits under this chapter.

15 (b) The maximum amount of a loan under this chapter [~~to~~
16 ~~process and market Texas agricultural crops~~] is \$500,000. [~~The~~
17 ~~maximum amount of a loan under this chapter to produce alternative~~
18 ~~agricultural crops in this state is \$250,000. The maximum amount of~~
19 ~~a loan under this chapter to finance water conservation projects or~~
20 ~~equipment for agricultural production purposes is \$250,000. The~~
21 ~~maximum amount of a loan under this chapter to finance production of~~
22 ~~a crop declared eligible for natural disaster relief, as defined by~~
23 ~~board rule, is \$250,000. The maximum amount of a loan under this~~
24 ~~chapter to finance a business in a rural area is \$250,000.]~~

25 SECTION 1.05. Section 58.012, Agriculture Code, is amended
26 by amending Subsections (a), (b), and (c) and adding Subsection (g)
27 to read as follows:

1 (a) The authority is governed by a board of directors
2 composed of the commissioner of agriculture, the director of the
3 Institute for International Agribusiness Studies at Prairie View
4 A&M University, and nine [~~seven~~] members appointed by the
5 commissioner [~~governor with the advice and consent of the senate~~].
6 Members of the board must be appointed in the numbers specified and
7 from the following categories:

8 (1) one person who is an elected or appointed official
9 of a municipality or county;

10 (2) four persons who are knowledgeable about
11 agricultural lending practices;

12 (3) one person who is a representative of agricultural
13 businesses; [~~and~~]

14 (4) one person who is a representative of agriculture
15 related entities, including rural chambers of commerce,
16 foundations, trade associations, institutions of higher education,
17 or other entities involved in agricultural matters; and

18 (5) two persons who represent young farmers and the
19 interests of young farmers.

20 (b) The appointed members of the board serve staggered terms
21 of two years, with the terms of four [~~three~~] members expiring on
22 January 1 of each even-numbered year and the terms of five [~~four~~]
23 members expiring on January 1 of each odd-numbered year.

24 (c) Any vacancy occurring in an appointed position on the
25 board shall be filled by the commissioner [~~governor~~] for the
26 unexpired term.

27 (g) Notwithstanding Subsection (f), age may be considered

1 by the commissioner in making appointments under Subsection (a)(5).

2 SECTION 1.06. Subsection (a), Section 58.013, Agriculture
3 Code, is amended to read as follows:

4 (a) The commissioner [~~governor~~] shall designate a member of
5 the board as the chairman of the board to serve in that capacity at
6 the pleasure of the commissioner [~~governor~~]. The board shall elect
7 a vice-chairman biennially from its members and shall elect a
8 secretary, a treasurer, and other officers it considers necessary.

9 SECTION 1.07. Subsection (a), Section 58.0176, Agriculture
10 Code, is amended to read as follows:

11 (a) Before a member of the board may assume the member's
12 duties [~~and before the member may be confirmed by the senate~~], the
13 member must complete at least one course of the training program
14 established under this section.

15 SECTION 1.08. Subsections (c) and (d), Section 58.023,
16 Agriculture Code, are amended to read as follows:

17 (c) Eligible agricultural businesses or lenders
18 participating in the authority's programs shall pay the costs of
19 applying for, participating in, and administering and servicing the
20 program, in amounts the board considers reasonable and necessary.
21 The board shall charge an administrative fee for guaranteeing a
22 loan under Subchapter E that may not be less than one percent of the
23 amount of the guaranteed loan. Any costs not paid by the eligible
24 agricultural businesses or lenders shall be paid from the funds of
25 the authority, including those funds established from bond
26 proceeds.

27 (d) The board by rule shall adopt an agreement to be used

1 between a lender and an approved applicant under which the
2 authority makes a payment from the Texas agricultural fund for the
3 purpose of providing a reduced interest rate on a loan guaranteed to
4 a borrower [~~under this subchapter~~]. The agreement must require the
5 borrower to use the proceeds of the loan for the purposes of the
6 program under which the payment is made. The board shall adopt
7 rules to implement this subsection.

8 SECTION 1.09. Subchapter D, Chapter 58, Agriculture Code,
9 is amended by adding Section 58.041 to read as follows:

10 Sec. 58.041. ISSUANCE OF DEBT BY TEXAS PUBLIC FINANCE
11 AUTHORITY. (a) In this section, "debt instrument" means a note,
12 debenture, bond, or other evidence of indebtedness.

13 (b) The Texas Public Finance Authority has the exclusive
14 authority to act on behalf of the authority in issuing debt
15 instruments authorized to be issued by the authority. A reference
16 in law to a debt instrument issued by the authority, in the context
17 of a debt instrument issued on or after September 1, 2009, means a
18 debt instrument issued by the Texas Public Finance Authority on
19 behalf of the authority.

20 (c) Notwithstanding Section 58.034(e), the authority shall
21 pay all costs incurred by the Texas Public Finance Authority for
22 issuing debt instruments on behalf of the authority and associated
23 fees and expenses.

24 (d) When the board authorizes the issuance of debt
25 instruments to fund a loan, the authority shall notify the Texas
26 Public Finance Authority of the amount of the loan and the recipient
27 of the loan and request the Texas Public Finance Authority to issue

1 debt instruments in an amount necessary to fund the loan. The
2 authority and the Texas Public Finance Authority shall determine
3 the amount and time of a debt instrument issue to best provide funds
4 for one or multiple loans.

5 (e) The Texas Public Finance Authority, at the request of
6 the authority, may issue debt instruments to provide money to the
7 Texas agricultural fund.

8 (f) The Texas Public Finance Authority may sell debt
9 instruments in any manner it determines to be in the best interest
10 of the authority, except that it may not sell a debt instrument that
11 has not been approved by the attorney general and registered with
12 the comptroller.

13 (g) The board, in consultation with the Texas Public Finance
14 Authority, shall adopt rules containing criteria for evaluating the
15 creditworthiness of loan applicants and the financial feasibility
16 of projects to be funded with debt instruments issued by the Texas
17 Public Finance Authority on behalf of the authority.

18 (h) The Texas Public Finance Authority may enter into a
19 credit agreement for a debt instrument issued by the Texas Public
20 Finance Authority on behalf of the authority for a period and on
21 conditions approved by the Texas Public Finance Authority.

22 (i) This subsection applies only in relation to general
23 obligation debt instruments. To the extent other sources of
24 revenue available for payment of the authority's debts are
25 insufficient and in accordance with the Texas Constitution, general
26 revenue is to be appropriated to the Texas Public Finance Authority
27 in an amount determined by the Texas Public Finance Authority to be

1 necessary to pay the principal, premium if any, and interest on
2 general obligation debt instruments issued by the Texas Public
3 Finance Authority on behalf of the authority, and that amount shall
4 be specified in the biennial appropriations acts.

5 SECTION 1.10. The heading to Subchapter E, Chapter 58,
6 Agriculture Code, is amended to read as follows:

7 SUBCHAPTER E. AGRICULTURAL [~~YOUNG FARMER~~] LOAN GUARANTEE PROGRAM

8 SECTION 1.11. Subdivision (2), Section 58.051, Agriculture
9 Code, is amended to read as follows:

10 (2) "Eligible applicant" means a person applying for a
11 loan guarantee under this subchapter who[+]

12 [~~(A) is at least 18 years of age but younger than~~
13 ~~40 years of age, and~~

14 [~~(B)~~] complies with the application procedures
15 prescribed by this subchapter.

16 SECTION 1.12. The heading to Section 58.052, Agriculture
17 Code, is amended to read as follows:

18 Sec. 58.052. AGRICULTURAL [~~YOUNG FARMER~~] LOAN GUARANTEE
19 PROGRAM.

20 SECTION 1.13. Section 58.052, Agriculture Code, is amended
21 by amending Subsections (b), (c), and (e) and adding Subsection (f)
22 to read as follows:

23 (b) The board, either directly or through authority
24 delegated to the commissioner, may grant to an eligible applicant a
25 guarantee of a loan made by a commercial lender for the purposes
26 prescribed by this subchapter. The board by rule shall establish
27 tiered loan guarantee limits. To be eligible to be guaranteed under

this subchapter, a loan with a term of more than one year must have a fixed interest rate ~~[guarantee amount may not exceed the lesser of \$250,000 or 90 percent of the loan amount]~~.

(c) The aggregate amount guaranteed under this subchapter may not exceed the lesser of three-fourths of ~~[twice]~~ the amount contained in the ~~[young farmer loan guarantee account within the]~~ Texas agricultural fund or \$12 million.

(e) The board shall adopt an agreement, to be used between a commercial lender and an approved eligible applicant, under which the program provides a payment from money in the Texas agricultural fund ~~[young farmer loan guarantee account]~~ for the purpose of providing a reduced interest rate on a loan guaranteed to a borrower under this subchapter. The board shall adopt rules to implement this subsection. The maximum rate reduction under this subsection per year for each borrower may ~~[shall]~~ not exceed three percentage points or an amount that results in \$10,000 in interest savings for the borrower for the year.

(f) The board by rule shall establish a certified lender program under which the board may certify commercial lenders to participate in the agricultural loan guarantee program in order to expedite the processing of loan guarantee applications by the board.

SECTION 1.14. Section 58.056, Agriculture Code, is amended to read as follows:

Sec. 58.056. MONEY FOR LOAN GUARANTEE PROGRAM. The authority may accept gifts and grants of money from the federal government, local governments, private corporations, or other

persons for use in the agricultural ~~[young farmer]~~ loan guarantee program. The legislature may appropriate money for the program.

SECTION 1.15. Subsections (b) and (d), Section 58.057, Agriculture Code, are transferred to Section 58.032, Agriculture Code, relettered as Subsections (g) and (h) of that section, and amended to read as follows:

(g) ~~[(b)]~~ The fund includes ~~[account consists of funds and transfers made to the account,]~~ grants and donations made for the purposes of the programs administered by the Texas Agricultural Finance Authority ~~[the young farmer loan guarantee program, income earned on money in the account,]~~ and any other money received under this chapter ~~[subchapter]~~. Notwithstanding Section 404.071, Government Code, income and interest earned on money in the fund ~~[account]~~ shall be deposited to the credit of the fund ~~[account]~~. ~~[At the end of each state fiscal year the authority shall transfer to the general credit of the Texas agricultural fund any interest earned on the account that remains after payment of any administrative expenses of the program.]~~ The fund ~~[account]~~ is exempt from the application of Section 403.095, Government Code.

(h) ~~[(d)]~~ The board shall attempt to administer the fund in a manner that makes private donations to the fund an eligible itemized deduction for federal income taxation purposes.

SECTION 1.16. Chapter 58, Agriculture Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. YOUNG FARMER INTEREST RATE REDUCTION PROGRAM

Sec. 58.071. DEFINITIONS. In this subchapter:

(1) "Eligible lending institution" means a financial

1 institution that makes commercial loans, is either a depository of
2 state funds or an institution of the Farm Credit System
3 headquartered in this state, and agrees to participate in the young
4 farmer interest rate reduction program and to provide collateral
5 equal to the amount of linked deposits placed with it.

6 (2) "Linked deposit" means a time deposit governed by
7 a written deposit agreement between the state and an eligible
8 lending institution that provides:

9 (A) that the eligible lending institution pay
10 interest on the deposit at a rate that is not less than the greater
11 of:

12 (i) the current market rate of a United
13 States treasury bill or note of comparable maturity minus three
14 percent; or

15 (ii) 0.5 percent;

16 (B) that the state not withdraw any part of the
17 deposit before the expiration of a period set by a written advance
18 notice of the intention to withdraw; and

19 (C) that the eligible lending institution agree
20 to lend the value of the deposit to an eligible borrower at a
21 maximum rate that is the linked deposit rate plus a maximum of four
22 percent.

23 Sec. 58.072. YOUNG FARMER INTEREST RATE REDUCTION PROGRAM.

24 (a) The board shall establish a young farmer interest rate
25 reduction program to promote the creation and expansion of
26 agricultural businesses by young people in this state.

27 (b) To be eligible to participate in the young farmer

1 interest rate reduction program, an applicant must be at least 18
2 years of age but younger than 46 years of age.

3 (c) The board shall approve or disapprove any and all
4 applications under this subchapter, provided that the board may
5 delegate this authority to the commissioner.

6 (d) The board shall adopt rules for the loan portion of the
7 young farmer interest rate reduction program.

8 (e) In order to participate in the young farmer interest
9 rate reduction program, an eligible lending institution may solicit
10 loan applications from eligible applicants.

11 (f) After reviewing an application and determining that the
12 applicant is eligible and creditworthy, the eligible lending
13 institution shall send the application for a linked deposit loan to
14 the administrator of the authority.

15 (g) The eligible lending institution shall certify the
16 interest rate applicable to the specific eligible applicant and
17 attach it to the application sent to the administrator of the
18 authority.

19 (h) After reviewing each loan application under this
20 subchapter, the board or the commissioner shall recommend to the
21 comptroller the acceptance or rejection of the application.

22 (i) After acceptance of the application, the comptroller
23 shall place a linked deposit with the applicable eligible lending
24 institution for the period the comptroller considers appropriate.
25 The comptroller may not place a deposit for a period extending
26 beyond the state fiscal biennium in which it is placed. Subject to
27 the limitation described by Section 58.075, the comptroller may

1 place time deposits at an interest rate described by Section
2 58.071(2).

3 (j) Before the placing of a linked deposit, the eligible
4 lending institution and the state, represented by the comptroller,
5 shall enter into a written deposit agreement containing the
6 conditions on which the linked deposit is made.

7 (k) If a lending institution holding linked deposits ceases
8 to be either a state depository or a Farm Credit System institution
9 headquartered in this state, the comptroller may withdraw the
10 linked deposits.

11 (l) The board may adopt rules that create a procedure for
12 determining priorities for loans granted under this subchapter.
13 Each rule adopted must state the policy objective of the rule.

14 (m) A lending institution is not ineligible to participate
15 in the young farmer interest rate reduction program solely because
16 a member of the board is also an officer, director, or employee of
17 the lending institution, provided that a board member shall recuse
18 himself or herself from any action taken by the board on an
19 application involving a lending institution by which the board
20 member is employed or for which the board member serves as an
21 officer or director.

22 (n) Linked deposits under the young farmer interest rate
23 reduction program shall be funded from the Texas agricultural fund.

24 Sec. 58.073. COMPLIANCE. (a) On accepting a linked
25 deposit, an eligible lending institution must loan money to
26 eligible applicants in accordance with the deposit agreement and
27 this subchapter. The eligible lending institution shall forward a

1 compliance report to the board.

2 (b) The board shall monitor compliance with this subchapter
3 and inform the comptroller of noncompliance on the part of an
4 eligible lending institution.

5 Sec. 58.074. STATE LIABILITY PROHIBITED. The state is not
6 liable to an eligible lending institution for payment of the
7 principal, interest, or any late charges on a loan made under this
8 subchapter. A delay in payment or default on a loan by a borrower
9 does not affect the validity of the deposit agreement. Linked
10 deposits are not an extension of the state's credit within the
11 meaning of any state constitutional prohibition.

12 Sec. 58.075. LIMITATIONS IN PROGRAM. (a) The maximum
13 amount of a loan under this subchapter is \$500,000.

14 (b) A loan granted under this subchapter may be used for any
15 agriculture-related operating expense, including the purchase or
16 lease of land or fixed assets acquisition or improvement, as
17 identified in the application.

18 SECTION 1.17. Chapter 58, Agriculture Code, is amended by
19 adding Subchapter G to read as follows:

20 SUBCHAPTER G. YOUNG FARMER GRANT PROGRAM

21 Sec. 58.091. GRANT PROGRAM. (a) The authority shall
22 administer a young farmer grant program. A grant must be for the
23 purpose of fostering the creation and expansion of agricultural
24 businesses by young people in this state.

25 (b) The board shall adopt rules governing the operation of
26 the program and selection criteria for grant recipients.

27 (c) The board shall select grant recipients.

1 Sec. 58.092. ELIGIBILITY. To be eligible to receive a grant
2 under this subchapter, a person must:

3 (1) be an agricultural producer who is at least 18
4 years of age but younger than 46 years of age; and

5 (2) provide matching funds in the amount of not less
6 than one dollar for each dollar of grant money received.

7 Sec. 58.093. AMOUNT OF GRANTS. A grant under the young
8 farmer grant program may not be less than \$5,000 or more than
9 \$20,000.

10 Sec. 58.094. APPLICATIONS. (a) The authority shall accept
11 grant applications during two application periods each year.

12 (b) Applicants shall submit an application on a form
13 approved by the board or the board's designee.

14 Sec. 58.095. FUNDING. The source of funds for the young
15 farmer grant program is the Texas agricultural fund.

16 SECTION 1.18. Section 1232.101, Government Code, is amended
17 to read as follows:

18 Sec. 1232.101. ISSUANCE OF BONDS FOR CERTAIN STATE
19 AGENCIES. With respect to all bonds authorized to be issued by or
20 on behalf of the adjutant general's department, Parks and Wildlife
21 Department, Texas Agricultural Finance Authority, Texas Low-Level
22 Radioactive Waste Disposal Authority, Stephen F. Austin State
23 University, Midwestern State University, and Texas Southern
24 University, the authority has the exclusive authority to act on
25 behalf of those entities in issuing bonds on their behalf. In
26 connection with those issuances and with the issuance of refunding
27 bonds on behalf of those entities, the authority is subject to all

1 rights, duties, and conditions surrounding issuance previously
2 applicable to the issuing entity under the statute authorizing the
3 issuance. A reference in an authorizing statute to the entity on
4 whose behalf the bonds are being issued applies equally to the
5 authority in its capacity as issuer on behalf of the entity.

6 SECTION 1.19. Subsection (d), Section 1372.028, Government
7 Code, is amended to read as follows:

8 (d) An issuer is not required to provide the statement
9 required by Subsection (c)(3)(F) if the issuer:

10 (1) is an issuer of a state-voted issue;

11 (2) is the Texas Department of Housing and Community
12 Affairs[~~, the Texas Agricultural Finance Authority,~~] or the Texas
13 State Affordable Housing Corporation; or

14 (3) provides evidence that one or more binding
15 contracts have been entered into, or other evidence acceptable to
16 the board as described by program rule, to spend the unexpended
17 proceeds by the later of:

18 (A) 12 months after the date the board receives
19 the application; or

20 (B) December 31 of the program year for which the
21 application is filed.

22 SECTION 1.20. Subsection (b), Section 502.174,
23 Transportation Code, is amended to read as follows:

24 (b) The county assessor-collector shall send an assessment
25 collected under this section to the comptroller, at the time and in
26 the manner prescribed by the Texas Agricultural Finance Authority,
27 for deposit in the Texas agricultural fund [~~to the credit of the~~]

~~young farmer loan guarantee account~~].

SECTION 1.21. The following provisions are repealed:

(1) Subdivision (3), Section 44.001, Agriculture Code;

(2) Subsection (c), Section 58.0173, Agriculture Code;

(3) Subsection (b), Section 58.0211, Agriculture Code;

(4) Subsections (a), (c), and (e), Section 58.057, Agriculture Code; and

(5) Section 1372.0235, Government Code.

SECTION 1.22. On the effective date of this Act:

(1) the young farmer loan guarantee program under Subchapter E, Chapter 58, Agriculture Code, as that subchapter existed before amendment by this Act, is abolished; and

(2) the agricultural loan guarantee program under Subchapter E, Chapter 58, Agriculture Code, as amended by this Act, is established.

SECTION 1.23. On the effective date of this Act, the young farmer loan guarantee account is abolished. All money in the account on that date remains in the Texas agricultural fund. All deposits purportedly made to the account on or after that date shall be deposited in the Texas agricultural fund. All references in law or rule to the young farmer loan guarantee account mean the Texas agricultural fund.

SECTION 1.24. (a) As soon as practicable on or after the effective date of this Act, the commissioner of agriculture shall

1 appoint two members to the board of directors of the Texas
2 Agricultural Finance Authority who represent young farmers and the
3 interests of young farmers. In appointing those members, the
4 commissioner shall appoint one person to a term expiring January 1,
5 2010, and one to a term expiring January 1, 2011.

6 (b) The changes in law made by this Act by the amendment of
7 Section 58.012, Agriculture Code, do not affect the entitlement of
8 a member of the board of directors of the Texas Agricultural Finance
9 Authority serving on the board immediately before the effective
10 date of this Act to continue to serve on the board and carry out the
11 board's functions for the remainder of the member's term. The
12 changes in law apply only to a member appointed on or after the
13 effective date of this Act. This Act does not prohibit a person who
14 is a member of the board on the effective date of this Act from being
15 reappointed to the board if the person has the qualifications
16 required for a member under Section 58.012, Agriculture Code, as
17 amended by this Act.

18 SECTION 1.25. Subsection (b), Section 58.041, Agriculture
19 Code, as added by this Act, does not apply to the extension,
20 renewal, or renegotiation of debt issued by the Texas Agricultural
21 Finance Authority before the effective date of this Act. The
22 extension, renewal, or renegotiation of debt issued by the Texas
23 Agricultural Finance Authority before the effective date of this
24 Act is governed by the law in effect immediately before that date,
25 and the former law is continued in effect for that purpose.

26 ARTICLE 2. PRESCRIBED BURNING BOARD

27 SECTION 2.01. Section 153.001, Natural Resources Code, is

amended to read as follows:

Sec. 153.001. DEFINITIONS [~~DEFINITION~~]. In this chapter:

(1) "Board" [~~,"board"~~] means the Prescribed Burning Board.

(2) "Department" means the Department of Agriculture.

SECTION 2.02. Subchapter A, Chapter 153, Natural Resources Code, is amended by adding Section 153.004 to read as follows:

Sec. 153.004. PRESCRIBED BURNING IN STATE OF EMERGENCY OR DISASTER. A certified and insured prescribed burn manager may conduct a burn in a county in which a state of emergency or state of disaster has been declared by the governor or the president of the United States, unless the declaration expressly prohibits all outdoor burning.

SECTION 2.03. Subsection (a), Section 153.041, Natural Resources Code, is amended to read as follows:

(a) The Prescribed Burning Board is established within the department [~~Department of Agriculture~~] and is composed of:

(1) an employee of the Texas Forest Service designated by the director of the Texas Forest Service;

(2) an employee of the Parks and Wildlife Department appointed by the executive director of the Parks and Wildlife Department;

(3) an employee of the Texas Commission on Environmental Quality [~~Natural Resource Conservation Commission~~] appointed by the executive director of the Texas Commission on Environmental Quality [~~Natural Resource Conservation Commission~~];

(4) an employee of the Texas AgriLife [~~Agricultural~~]

1 Extension Service appointed by the executive director of the Texas
2 AgriLife [~~Agricultural~~] Extension Service;

3 (5) an employee of [~~the~~] Texas AgriLife Research
4 [~~Agricultural Experiment Station~~] appointed by the director of
5 [~~the~~] Texas AgriLife Research [~~Agricultural Experiment Station~~];

6 (6) an employee of the Texas Tech University Range and
7 Wildlife Department appointed by the dean of the Texas Tech
8 University College of Agricultural Sciences and Natural Resources;

9 (7) an employee of the department [~~Department of~~
10 ~~Agriculture~~] appointed by the commissioner of agriculture;

11 (8) an employee of the State Soil and Water
12 Conservation Board appointed by the executive director of the State
13 Soil and Water Conservation Board; and

14 (9) five persons who are:

15 (A) owners of agricultural land, as that term is
16 defined by Section 153.081;

17 (B) self-employed or employed by a person other
18 than a governmental entity; and

19 (C) appointed by the commissioner of
20 agriculture.

21 SECTION 2.04. Section 153.044, Natural Resources Code, is
22 amended to read as follows:

23 Sec. 153.044. SUNSET PROVISION. The Prescribed Burning
24 Board is subject to Chapter 325, Government Code (Texas Sunset
25 Act). The board shall be reviewed during the period in which the
26 Department of Agriculture is reviewed [~~Unless continued in~~
27 ~~existence as provided by that chapter, the board is abolished and~~

~~this chapter expires September 1, 2009]~~.

SECTION 2.05. Section 153.046, Natural Resources Code, is amended to read as follows:

Sec. 153.046. DUTIES. The board shall:

(1) establish standards for prescribed burning;

(2) develop a comprehensive training curriculum for certified and insured prescribed burn managers;

(3) establish standards for certification, recertification, and training for certified and insured prescribed burn managers;

(4) establish minimum education and professional requirements for instructors for the approved curriculum; and

(5) establish minimum insurance requirements for certified and insured prescribed burn managers.

SECTION 2.06. Section 153.047, Natural Resources Code, is amended to read as follows:

Sec. 153.047. PRESCRIBED BURNING STANDARDS. Minimum standards established by the board for prescribed burning must:

(1) ensure that prescribed burning is the controlled application of fire to naturally occurring or naturalized vegetative fuels under specified environmental conditions in accordance with a written prescription plan:

(A) designed to confine the fire to a predetermined area and to accomplish planned land management objectives; and

(B) that conforms to the standards established under this section;

1 (2) require that at least one certified and insured
2 prescribed burn manager is present on site during the conduct of the
3 prescribed burn;

4 (3) establish appropriate guidelines for size of
5 burning crews sufficient to:

6 (A) conduct the burn in accordance with the
7 prescription plan; and

8 (B) provide adequate protection for the safety of
9 persons and of adjacent property;

10 (4) include standards for notification to adjacent
11 land owners, the Texas Commission on Environmental Quality [~~Natural~~
12 ~~Resource Conservation Commission~~], and local fire authorities; and

13 (5) include minimum insurance requirements for
14 certified and insured prescribed burn managers.

15 SECTION 2.07. Subsections (c) and (e), Section 153.048,
16 Natural Resources Code, are amended to read as follows:

17 (c) The certification is for two [~~five~~] years.

18 (e) The board shall maintain a register of certified and
19 insured prescribed burn managers and dates of completion of initial
20 and continuing training.

21 SECTION 2.08. Subsections (a) and (b), Section 153.081,
22 Natural Resources Code, are amended to read as follows:

23 (a) Subject to Section 153.082, an owner, lessee, or
24 occupant of agricultural land is not liable for property damage or
25 for injury or death to persons caused by or resulting from
26 prescribed burning conducted on the land owned by, leased by, or
27 occupied by the person if the prescribed burning is conducted under

1 the supervision of a certified and insured prescribed burn manager.

2 (b) This section does not apply to an owner, lessee, or
3 occupant of agricultural land who is a certified and insured
4 prescribed burn manager and conducts a burn on that land.

5 SECTION 2.09. Section 153.082, Natural Resources Code, is
6 amended to read as follows:

7 Sec. 153.082. INSURANCE. The limitation on liability under
8 Section 153.081 does not apply to an owner, lessee, or occupant of
9 agricultural land unless the certified and insured prescribed burn
10 manager conducting a burn on the land has liability insurance
11 coverage:

12 (1) of at least \$1 million for each single occurrence
13 of bodily injury or death, or injury to or destruction of property;
14 and

15 (2) with a policy period minimum aggregate limit of at
16 least \$2 million.

17 SECTION 2.10. Chapter 153, Natural Resources Code, is
18 amended by adding Subchapter D to read as follows:

19 SUBCHAPTER D. COMPLAINTS, ENFORCEMENT, AND PENALTIES

20 Sec. 153.101. COMPLAINTS. The department shall receive and
21 process complaints concerning certified and insured prescribed
22 burn managers in the manner described by Section 12.026,
23 Agriculture Code, and rules adopted under that section.

24 Sec. 153.102. DISCIPLINARY ACTION; SCHEDULE OF SANCTIONS.

25 (a) The department may impose an administrative sanction,
26 including an administrative penalty, as provided by Sections
27 12.020, 12.0201, 12.0202, and 12.0261, Agriculture Code, for a

1 violation of this chapter.

2 **(b) The department by rule shall adopt a schedule of the**
3 **disciplinary sanctions that the department may impose under this**
4 **chapter. In adopting the schedule of sanctions, the department**
5 **shall ensure that the severity of the sanction imposed is**
6 **appropriate to the type of violation or conduct that is the basis**
7 **for disciplinary action.**

8 **(c) In determining the appropriate disciplinary action,**
9 **including the amount of any administrative penalty to assess, the**
10 **department shall consider:**

11 **(1) whether the person:**

12 **(A) is being disciplined for multiple violations**
13 **of either this chapter or a rule or order adopted under this**
14 **chapter; or**

15 **(B) has previously been the subject of**
16 **disciplinary action by the department under this chapter and has**
17 **previously complied with department rules and this chapter;**

18 **(2) the seriousness of the violation;**

19 **(3) the threat to public safety; and**

20 **(4) any mitigating factors.**

21 **Sec. 153.103. INJUNCTION. (a) The department may apply to**
22 **a district court in any county for an injunction to restrain a**
23 **person who is not a certified and insured prescribed burn manager**
24 **from representing that the person is a certified and insured**
25 **prescribed burn manager.**

26 **(b) At the request of the department, the attorney general**
27 **shall initiate and conduct an action in a district court in the**

1 state's name to obtain an injunction under this section.

2 Sec. 153.104. EMERGENCY SUSPENSION. (a) On determining
3 that a certification holder is engaged in or about to engage in a
4 violation of this chapter and that the certification holder's
5 continued practice constitutes an immediate threat to the public
6 welfare, the department may issue an order suspending the
7 certification holder's certification without notice or a hearing.
8 The department shall immediately serve notice of the suspension on
9 the certification holder.

10 (b) The notice required by Subsection (a) must:

11 (1) be personally served on the certification holder
12 or be sent by registered or certified mail, return receipt
13 requested, to the certification holder's last known address
14 according to the department's records;

15 (2) state the grounds for the suspension; and

16 (3) inform the certification holder of the right to a
17 hearing on the suspension order.

18 (c) A certification holder whose certification is suspended
19 under this section is entitled to request a hearing on the
20 suspension not later than the 30th day after the date of receipt of
21 notice of the suspension. Not later than the fifth day after the
22 date a hearing is requested, the department shall issue a notice of
23 hearing.

24 (d) A hearing on a suspension order under this section is
25 subject to Chapter 2001, Government Code. If the hearing is before
26 an administrative law judge, after the hearing, the administrative
27 law judge shall recommend to the department whether to uphold,

1 vacate, or modify the suspension order.

2 (e) A suspension order issued under this section remains in
3 effect until further action is taken by the department. If the
4 administrative law judge's recommendation under Subsection (d) is
5 to vacate the order, the department shall determine whether to
6 vacate the order not later than the second day after the date of the
7 recommendation.

8 SECTION 2.11. (a) Subsection (c), Section 153.048,
9 Natural Resources Code, as amended by this Act, applies to a
10 certification issued or renewed after the effective date of this
11 Act. A certification issued or renewed before the effective date of
12 this Act is governed by the law in effect on the date the
13 certification was issued or renewed, and the former law is
14 continued in effect for that purpose.

15 (b) Sections 153.102, 153.103, and 153.104, Natural
16 Resources Code, as added by this Act, apply only to conduct that
17 occurs on or after the effective date of this Act. Conduct that
18 occurs before the effective date of this Act is governed by the law
19 in effect when the conduct occurred, and the former law is continued
20 in effect for that purpose.

21 ARTICLE 3. TEXAS-ISRAEL EXCHANGE FUND BOARD

22 SECTION 3.01. The heading to Chapter 45, Agriculture Code,
23 is amended to read as follows:

24 CHAPTER 45. TEXAS-ISRAEL EXCHANGE RESEARCH PROGRAM [~~FUND~~]

25 SECTION 3.02. Section 45.001, Agriculture Code, is amended
26 to read as follows:

27 Sec. 45.001. LEGISLATIVE FINDINGS; PURPOSE. (a) The

1 legislature finds that Texas and Israel have many interests in
 2 common. They face many of the same difficulties in agriculture; the
 3 geography of both areas produces semiarid climatic conditions;
 4 there is present in both areas a rising demand for a limited supply
 5 of water coupled with increasing pressures to minimize the use of
 6 energy in all aspects of agriculture. Scientific and technological
 7 cooperatives already produce close ties between the two areas while
 8 engaging in binational projects for scientific and industrial
 9 research and development.

10 A program [~~fund~~] to support joint agricultural research and
 11 development by, and the development of trade and business relations
 12 between, Texas and Israel will address common problems and make
 13 substantial contributions to the development of agriculture,
 14 trade, and business in both areas. Since Texas has long emphasized
 15 broad-based agricultural research and Israel has originated and
 16 developed agricultural technologies designed to maximize
 17 production with minimal use of resources such as water and labor,
 18 each of the two areas will benefit by sharing information and
 19 expertise.

20 (b) The purpose of this chapter is to:

21 (1) establish a program [~~fund~~] to promote and support
 22 practical and applied agricultural research and development that
 23 will result in mutual benefit to Texas and Israel and will help to
 24 provide solutions to food and fiber production problems wherever
 25 they exist, particularly those relating to water conservation; and

26 (2) establish a program of mutual cooperation that
 27 will foster the development of trade, mutual assistance, and

business relations between Texas and Israel.

SECTION 3.03. Section 45.002, Agriculture Code, is amended to read as follows:

Sec. 45.002. DEFINITION ~~[DEFINITIONS]~~. In this chapter, ~~[+]~~

~~[(1)]~~ "applied ~~[Applied]~~ research" means the process of assembling knowledge gained by careful and diligent search and studious inquiry and examination and using that knowledge to solve practical, real-world problems.

~~[(2)] "Board" means the Texas-Israel Exchange Fund Board.~~

~~[(3)] "Fund" means the Texas-Israel Exchange Fund.]~~

SECTION 3.04. Section 45.005, Agriculture Code, is amended to read as follows:

Sec. 45.005. GENERAL FUNCTIONS, POWERS, AND DUTIES.

(a) The department may establish a binational program to support joint agricultural research and development with Israel. The scope of agricultural research and development which the program ~~[fund]~~ may promote and support encompasses all scientific activities related to agriculture, including production, processing, marketing, and agricultural services, with emphasis on the support of applied research to improve water, labor, and energy utilization in agriculture.

(b) The program ~~[fund]~~ shall support applied research in areas of potential mutual interest, including:

- (1) water conservation;
- (2) water management and use;
- (3) soil management and conservation;

1 (4) innovative sources of energy for agricultural
2 production;

3 (5) environmental aspects of agricultural technology;

4 (6) intensive crop production; and

5 (7) agricultural engineering and processing.

6 (c) The program [~~fund~~] may undertake agricultural research
7 and development projects of mutual benefit that are located in
8 Texas, Israel, or any other location considered advisable by the
9 department or suggested by the advisory committee [~~boards~~].

10 (d) The department [~~fund~~] may make research or development
11 grants or loans to public or private entities who intend to carry
12 out the stated objectives of the program [~~fund~~].

13 (e) The program [~~fund~~] shall encourage or support the
14 exchange of agricultural producers, scientists, teachers,
15 students, or other types of agricultural experts between the two
16 cooperating areas of Texas and Israel.

17 (f) The program [~~fund~~] shall encourage and support [~~a~~
18 ~~program of~~] mutual cooperation that will foster the development of
19 trade, mutual assistance, and business relations between Texas and
20 Israel.

21 SECTION 3.05. Subsections (b) and (d), Section 45.007,
22 Agriculture Code, are amended to read as follows:

23 (b) The department [~~board~~] may accept gifts and grants from
24 the federal government, state government, and private sources, as
25 well as legislative appropriations to carry out the purposes of
26 this chapter. The use of gifts and grants other than legislative
27 appropriation is subject only to limitations contained in the gift

1 or grant.

2 (d) The department [~~board~~] shall make an annual accounting
3 of all money received, awarded, and expended during the year under
4 this chapter to the legislative committees responsible for
5 agricultural issues.

6 SECTION 3.06. Chapter 45, Agriculture Code, is amended by
7 adding Section 45.009 to read as follows:

8 Sec. 45.009. TEXAS-ISREAL EXCHANGE ADVISORY COMMITTEE. The
9 department may establish a binational agricultural research
10 advisory committee to provide guidance and direction on activities
11 conducted under this chapter and the expenditure of money
12 appropriated for the purposes of this chapter.

13 SECTION 3.07. (a) The Texas-Israel Exchange Fund Board and
14 the Texas-Israel Exchange Fund are abolished.

15 (b) The following provisions of the Agriculture Code are
16 repealed:

- 17 (1) Section 45.003;
- 18 (2) Section 45.004;
- 19 (3) Section 45.006;
- 20 (4) Subsections (a) and (c), Section 45.007; and
- 21 (5) Section 45.008.

22 ARTICLE 4. STRUCTURE OF CERTAIN BOARDS AND ADVISORY COMMITTEES

23 SECTION 4.01. Chapter 50B, Agriculture Code, is amended by
24 adding Section 50B.0015 to read as follows:

25 Sec. 50B.0015. DEFINITION. In this chapter, "committee"
26 means the wine industry development and marketing advisory
27 committee.

SECTION 4.02. Section 50B.002, Agriculture Code, is amended to read as follows:

Sec. 50B.002. WINE INDUSTRY DEVELOPMENT AND MARKETING~~[+]~~ ADVISORY COMMITTEE. (a) The commissioner shall ~~[may]~~ appoint a wine industry development and marketing advisory committee to:

(1) develop a long-term vision and marketable identity for the wine industry in the state that take into consideration future industry development, funding, research, educational programming, risk management, and marketing; and

(2) assist the commissioner in establishing and implementing the Texas Wine Marketing Assistance Program under Chapter 110, Alcoholic Beverage Code.

(b) The committee consists of members appointed by the commissioner who represent a diverse cross-section of the wine industry, including representatives of:

(1) grape growers;

(2) wineries;

(3) wholesalers;

(4) package stores;

(5) retailers;

(6) researchers;

(7) consumers;

(8) the department; and

(9) the Texas Alcoholic Beverage Commission.

(c) The members of the committee serve without compensation.

(d) A member of the committee serves at the pleasure of the

1 commissioner for a term of two years. The commissioner may
2 reappoint a member to the committee.

3 (e) The commissioner shall select a presiding officer from
4 among the members and adopt rules governing the operation of the
5 committee.

6 (f) The committee shall meet as necessary to provide
7 guidance to the commissioner.

8 SECTION 4.03. Subsections (a) and (d), Section 62.002,
9 Agriculture Code, are amended to read as follows:

10 (a) The State Seed and Plant Board is an agency of the state.
11 The board is composed of [~~six members appointed by the governor with~~
12 ~~the advice and consent of the senate. Membership must include~~]:

13 (1) one individual, appointed by the president of
14 Texas A&M University, from the Soils and Crop Sciences Department,
15 Texas Agricultural Experiment Station, Texas A&M [~~A & M~~]
16 University;

17 (2) one individual, appointed by the president of
18 Texas Tech University, from the Department of Plant and Soil
19 Sciences, Texas Tech University;

20 (3) one individual, appointed by the commissioner,
21 licensed as a Texas Foundation, Registered, or Certified seed or
22 plant producer who is not employed by a public institution;

23 (4) one individual, appointed by the commissioner, who
24 sells Texas Foundation, Registered, or Certified seed or plants;

25 (5) one individual, appointed by the commissioner,
26 actively engaged in farming but not a producer or seller of Texas
27 Foundation, Registered, or Certified seed or plants; and

1 (6) the head of the seed division of the department.

2 (d) The commissioner [~~governor~~] shall designate a member of
3 the board as the chairman to serve in that capacity at the pleasure
4 of the commissioner [~~governor~~]. The board annually shall elect a
5 vice-chairman and secretary. The board shall meet at times and
6 places determined by the chairman.

7 SECTION 4.04. Subsection (a), Section 62.0027, Agriculture
8 Code, is amended to read as follows:

9 (a) Before a member of the board may assume the member's
10 duties [~~and before the member may be confirmed by the senate~~], the
11 member must complete at least one course of the training program
12 established under this section.

13 SECTION 4.05. Subsections (a) and (f), Section 103.003,
14 Agriculture Code, are amended to read as follows:

15 (a) The Produce Recovery Fund Board is composed of five
16 members appointed by the commissioner [~~governor with the advice and~~
17 ~~consent of the senate~~]. Two members must be producers, one must be
18 a license holder licensed under Chapter 101, and two must be members
19 of the general public.

20 (f) The commissioner [~~governor~~] shall designate a member of
21 the board as the chairman of the board to serve in that capacity at
22 the pleasure of the commissioner [~~governor~~].

23 SECTION 4.06. Subsection (a), Section 103.019, Agriculture
24 Code, is amended to read as follows:

25 (a) Before a member of the board may assume the member's
26 duties [~~and before the member may be confirmed by the senate~~], the
27 member must complete at least one course of the training program

1 established under this section.

2 SECTION 4.07. Subsection (b), Section 110.002, Alcoholic
3 Beverage Code, is amended to read as follows:

4 (b) The commissioner, in consultation with the advisory
5 committee established under Section 50B.002, Agriculture Code
6 [~~110.003~~], shall adopt rules as necessary to implement the program.

7 SECTION 4.08. The following statutes are repealed:

8 (1) Subsection (c), Section 62.0023, Agriculture
9 Code;

10 (2) Subsection (b), Section 103.003 and Subsection
11 (c), Section 103.017, Agriculture Code; and

12 (3) Section 110.003, Alcoholic Beverage Code.

13 SECTION 4.09. On the effective date of this Act, the Texas
14 Wine Marketing Assistance Program advisory committee and the wine
15 industry development advisory committee are abolished. The
16 commissioner of agriculture may appoint a person who previously
17 served on either of those committees to the wine industry
18 development and marketing advisory committee established under
19 Section 50B.002, Agriculture Code, as amended by this Act.

20 SECTION 4.10. The changes in law made by this Act by the
21 amendment of Sections 62.002 and 103.003, Agriculture Code, do not
22 affect the entitlement of a member serving on the State Seed and
23 Plant Board or Produce Recovery Fund Board immediately before the
24 effective date of this Act to continue to serve as a board member
25 for the remainder of the member's term. The changes in law apply
26 only to a member appointed on or after the effective date of this
27 Act.

ARTICLE 5. CERTAIN AGRICULTURAL REGULATORY PROGRAMS

SECTION 5.01. Section 13.251, Agriculture Code, is amended to read as follows:

Sec. 13.251. DEFINITION. In this subchapter, "public weigher" means a business certified under this subchapter ~~[person who is elected or appointed]~~ to issue an official certificate declaring the accurate weight or measure of a commodity that the business ~~[person]~~ is requested to weigh.

SECTION 5.02. Section 13.255, Agriculture Code, is amended to read as follows:

Sec. 13.255. CERTIFICATE. (a) A public weigher~~[, whether elected or appointed, or deputy public weigher]~~ may not officially weigh a commodity unless the weigher has obtained from the department a certificate of authority.

(b) A ~~[state public weigher must submit a nonrefundable fee, as provided by department rule, with the application for a certificate of authority. A county public weigher or a deputy]~~ public weigher must submit a fee, as provided by department rule, with the application for a certificate of authority.

SECTION 5.03. Section 13.2555, Agriculture Code, is amended to read as follows:

Sec. 13.2555. REVOCATION, MODIFICATION, OR SUSPENSION OF CERTIFICATE. (a) The department shall revoke, modify, or suspend the certificate of authority of a [an appointed public weigher or a deputy of an appointed county] public weigher, assess an administrative penalty, place on probation the public weigher ~~[person]~~ whose certificate has been suspended, or reprimand a [an

1 ~~appointed public weigher or a deputy of an appointed county~~ public
2 weigher for a violation of this subchapter or a rule adopted by the
3 department under this subchapter.

4 (b) If a certificate suspension is probated, the department
5 may require the public weigher ~~[person]~~ to:

6 (1) report regularly to the department on matters that
7 are the basis of the probation;

8 (2) limit practice to the areas prescribed by the
9 department; or

10 (3) continue or renew professional education until the
11 public weigher ~~[person]~~ attains a degree of skill satisfactory to
12 the department in those areas that are the basis of the probation.

13 (c) If the department proposes to revoke, modify, or suspend
14 a public weigher's ~~[person's]~~ certificate, the public weigher
15 ~~[person]~~ is entitled to a hearing conducted under Section 12.032.
16 The decision of the department is appealable in the same manner as
17 provided for contested cases under Chapter 2001, Government Code.

18 SECTION 5.04. Section 13.256, Agriculture Code, is amended
19 to read as follows:

20 Sec. 13.256. BOND. ~~[(a)]~~ Each ~~[county public weigher,~~
21 ~~whether elected or appointed, and each deputy]~~ public weigher shall
22 execute ~~[for the full term of office]~~ a bond in accordance with
23 rules adopted ~~[that is in the amount of \$2,500, approved]~~ by the
24 department~~[, and made payable to the county judge of the county for~~
25 ~~which the weigher is elected or appointed]~~. The bond must be
26 conditioned on the accurate weight or measure of a commodity being
27 reflected on the certificate issued by the public weigher ~~[or~~

1 ~~deputy~~], on the protection of a commodity that the public weigher
2 ~~[or deputy]~~ is requested to weigh or measure, and on compliance with
3 all laws and rules governing public weighers. ~~[The bond shall be~~
4 ~~filed with the county clerk's office in the county for which the~~
5 ~~public weigher or deputy is appointed or elected.]~~ The bond is not
6 void on first recovery. A person injured by the public weigher may
7 sue on the bond.

8 ~~[(b) Each state public weigher shall execute a bond similar~~
9 ~~to the bond required under Subsection (a) of this section, except~~
10 ~~that the bond is for \$10,000, made payable to the State of Texas,~~
11 ~~and filed with the department.]~~

12 SECTION 5.05. Subsection (a), Section 13.257, Agriculture
13 Code, is amended to read as follows:

14 (a) On each certificate of weight or measure that a public
15 weigher ~~[or deputy public weigher]~~ issues, the public weigher ~~[or~~
16 ~~deputy public weigher]~~ shall include the:

17 (1) time and date that the weight or measurement was
18 taken;

19 (2) signature and license number of the public weigher
20 ~~[or deputy public weigher]~~; and

21 (3) seal of the department.

22 SECTION 5.06. Subsection (a), Section 13.259, Agriculture
23 Code, is amended to read as follows:

24 (a) A public weigher ~~[or deputy public weigher]~~ who
25 intentionally or knowingly issues a certificate of weight or
26 measure giving a false weight or measure for a commodity weighed or
27 measured commits an offense.

SECTION 5.07. Section 13.261, Agriculture Code, is amended to read as follows:

Sec. 13.261. ~~[POWER OF DEPARTMENT,]~~ RULES. The department shall ~~[may]~~ adopt rules governing the bond requirements and ~~[procedures to be followed in administering the]~~ fees imposed under this subchapter.

SECTION 5.08. Section 52.038, Agriculture Code, is amended to read as follows:

Sec. 52.038. EXISTING CORPORATIONS AND ASSOCIATIONS. ~~[(a)]~~ Any corporation or association organized under prior law before March 1, 1921, may elect, by a majority vote of its members or stockholders, to adopt this chapter and become subject to it by:

(1) adopting the restrictions provided by this chapter; and

(2) executing, in duplicate on forms supplied by the secretary of state, an instrument, signed and acknowledged by its directors, stating that the entity, by a majority vote of its members or stockholders, has decided to accept the benefits of and be bound by this chapter~~[, and~~

~~[(3) filing articles of incorporation in accordance with the requirements of Section 52.035 of this code except that the entity's directors shall sign the articles].~~

~~[(b) The filing fee for the articles filed under Subsection (a) of this section is equal to the filing fee for an amendment to the articles of incorporation as provided by Section 52.151 of this code.]~~

SECTION 5.09. Section 52.151, Agriculture Code, is amended

to read as follows:

Sec. 52.151. TAX EXEMPTIONS ~~[FEES]~~. ~~[(a) The fee for filing articles of incorporation under this chapter is \$10.~~

~~[(b) The fee for filing an amendment to the articles of incorporation under this chapter is \$2.50.~~

~~[(c) Each marketing association shall pay to the department an annual license fee, as provided by department rule.]~~ A marketing association is exempt from all ~~[other]~~ franchise or license taxes, except that a marketing association is exempt from the franchise tax imposed by Chapter 171, Tax Code, only if exempted by that chapter.

SECTION 5.10. Section 101.003, Agriculture Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) This section does not apply to:

(1) a retailer, unless the retailer:

(A) has annual sales of perishable commodities that comprise 50 percent or more of the retailer's total sales; or

(B) employs a buying agent who buys directly from a producer;

(2) a producer who handles or deals exclusively in the producer's own products;

(3) a person shipping less than six standard boxes of citrus fruit in any one separate shipment; ~~[or]~~

(4) a person who ships a noncommercial shipment of perishable commodities; or

(5) a person who purchases perishable commodities and

1 pays for the perishable commodities in United States currency
2 before or at the time of delivery or taking possession.

3 (c) A person who purchases perishable commodities without a
4 license, as owner, agent, or otherwise, does not violate this
5 section if the person obtains a license not later than the 30th day
6 after the date the person first purchases perishable commodities.

7 SECTION 5.11. Section 101.004, Agriculture Code, is amended
8 to read as follows:

9 Sec. 101.004. LICENSE OR REGISTRATION CATEGORIES. ~~[(a)]~~ A
10 person shall apply for a license if the person:

11 (1) purchases perishable commodities on credit;

12 (2) takes possession of perishable commodities for
13 consignment or handling on behalf of the producer or owner of the
14 perishable commodities; or

15 (3) takes possession of perishable commodities for
16 consignment or handling in a manner or under a contract that does
17 not require or result in payment to the producer, seller, or
18 consignor of the full amount of the purchase price in United States
19 currency at the time of delivery or at the time that the perishable
20 commodities pass from the producer, seller, or consignor to the
21 person.

22 ~~[(b) A person shall register as a cash dealer if the person~~
23 ~~purchases perishable commodities and pays for the perishable~~
24 ~~commodities in United States currency before or at the time of~~
25 ~~delivery or taking possession.]~~

26 SECTION 5.12. Subsections (b) and (c), Section 101.007,
27 Agriculture Code, are amended to read as follows:

1 (b) If [~~an applicant for a license indicates on the~~
2 ~~application that~~] a previous license of the applicant has been or is
3 suspended or has been revoked, the department may not issue or renew
4 a license to the applicant until the department is furnished with
5 satisfactory proof that the applicant is, on the date of
6 application, qualified to receive the license for which the
7 applicant applied as provided by department rule.

8 (c) The department may refuse to issue or renew a license
9 under this section if the department determines that a license
10 previously issued to the applicant was revoked or suspended or that
11 the applicant has engaged in conduct for which a license could have
12 been revoked or suspended. In determining whether to refuse to
13 issue or renew a license under this section, the department may
14 consider:

15 (1) the facts and circumstances pertaining to a prior
16 suspension or revocation;

17 (2) the financial condition of the applicant as of the
18 date of the application;

19 (3) any judgment by a court of this state that is
20 outstanding against the applicant and is due and owing to a
21 licensee, grower, or producer of perishable commodities; and

22 (4) any certified claim against the applicant by a
23 licensee, grower, or producer of perishable commodities that is
24 under consideration by the department.

25 SECTION 5.13. Section 101.009, Agriculture Code, is amended
26 to read as follows:

27 Sec. 101.009. LICENSEE LIST. The department may publish as

1 often as it considers necessary a list in pamphlet form or on the
2 department's Internet website of all persons licensed under this
3 chapter.

4 SECTION 5.14. Subsections (a) and (b), Section 101.013,
5 Agriculture Code, are amended to read as follows:

6 (a) If a licensee or a person required to be licensed causes
7 a producer, seller, or owner, or an agent of a producer, seller, or
8 owner, to part with control or possession of all or any part of the
9 person's perishable commodities and agrees by contract of purchase
10 to pay the purchase price on demand following delivery, the
11 licensee or person required to be licensed shall make payment
12 immediately on demand.

13 (b) If a person makes demand for the purchase price in
14 writing, the mailing of a registered letter that makes the demand
15 and is addressed to the licensee or person required to be licensed
16 at their [~~the licensee's~~] business address is prima facie evidence
17 that demand was made at the time the letter was mailed.

18 SECTION 5.15. Section 101.014, Agriculture Code, is amended
19 to read as follows:

20 Sec. 101.014. COMMISSION OR SERVICE CHARGE IN CONTRACT. If
21 a licensee or a person required to be licensed handles perishable
22 commodities by guaranteeing a producer or owner a minimum price and
23 handles the perishable commodities on the account of the producer
24 or owner, the licensee or person required to be licensed shall
25 include in the contract with the producer or owner the maximum
26 amount that the licensee or person required to be licensed will
27 charge for commission, service, or both, in connection with the

1 perishable commodities handled.

2 SECTION 5.16. Subsections (a) and (b), Section 101.015,
3 Agriculture Code, are amended to read as follows:

4 (a) Except as otherwise provided by this section, a licensee
5 or a person required to be licensed shall settle with the producer
6 or seller of perishable commodities on the basis of the grade and
7 quality that is referred to in the contract under which the licensee
8 or person required to be licensed obtained possession or control of
9 the perishable commodities.

10 (b) If the perishable commodities have been inspected by a
11 state or federal inspector in this state and found to be of a
12 different grade or quality than that referred to in the contract,
13 the licensee or person required to be licensed shall settle with the
14 producer or seller of the perishable commodities on the basis of the
15 grade and quality determined by the inspector.

16 SECTION 5.17. Section 101.0151, Agriculture Code, is
17 amended to read as follows:

18 Sec. 101.0151. BUYING OR SELLING BY WEIGHT. A licensee or a
19 person required to be licensed who buys or sells perishable
20 commodities by weight shall weigh or have the perishable
21 commodities weighed on scales that meet state requirements.

22 SECTION 5.18. Section 101.016, Agriculture Code, is amended
23 to read as follows:

24 Sec. 101.016. RECORDS OF PURCHASE. (a) A licensee or a
25 person required to be licensed or a packer, processor, or
26 warehouseman may not receive or handle perishable commodities
27 without requiring the person from whom the perishable commodities

are purchased or received to furnish a statement in writing showing:

- (1) the owner of the perishable commodities;
 - (2) the grower of the perishable commodities;
 - (3) the approximate location of the land on which the perishable commodities were grown;
 - (4) the date the perishable commodities were gathered;
- and
- (5) by whose authority the perishable commodities were gathered.

(b) The licensee or person required to be licensed, packer, processor, or warehouseman shall keep records of statements furnished under Subsection (a) in a permanent book or folder for a minimum of three years from the date of the transaction and shall make the records available for inspection by any interested party.

(c) The licensee or person required to be licensed, packer, handler, or warehouseman shall:

- (1) prepare a receipt detailing the quantity of perishable commodities received from the producer or owner at the time of receipt of the commodities; and

- (2) on request, provide the receipt to the producer or owner.

(d) The department periodically may investigate licensees, persons required to be licensed, or persons alleged to be selling or purchasing perishable commodities in violation of this chapter and, without notice, may require evidence of purchase of any perishable commodities in a person's possession or past possession.

1 SECTION 5.19. Section 101.017, Agriculture Code, is amended
2 to read as follows:

3 Sec. 101.017. RECORD OF SALE. (a) Except for a retailer, a
4 licensee or a person required to be licensed shall maintain for each
5 sale a complete and accurate record showing:

6 (1) the date of sale of the perishable commodities;

7 (2) the person to whom the perishable commodities were
8 sold;

9 (3) the grade and selling price of the perishable
10 commodities; and

11 (4) an itemized statement of expenses of any kind or
12 character incurred in the sale or handling of the perishable
13 commodities, including the amount of the commission to the licensee
14 or person required to be licensed.

15 (b) On demand of the department or of an owner, seller, or
16 agent of the owner or seller, the licensee or person required to be
17 licensed shall furnish the information demanded before the 11th day
18 following the date of demand.

19 (c) A licensee or a person required to be licensed shall
20 maintain the information required to be kept by this section for at
21 least three years after the date of sale.

22 SECTION 5.20. Subsection (a), Section 101.020, Agriculture
23 Code, is amended to read as follows:

24 (a) A person commits an offense if the person:

25 (1) acts in violation of Section 101.003 by not
26 obtaining a license or registration or after receiving notice of
27 cancellation of a license or registration;

1 (2) acts or assumes to act as a transporting agent or
2 buying agent:

3 (A) without first obtaining an identification
4 card; or

5 (B) after receiving notice of cancellation of an
6 identification card;

7 (3) as a transporting agent or buying agent, fails and
8 refuses to turn over to the department an identification card in
9 accordance with Section 101.010(e);

10 (4) as a license holder or a person required to be
11 licensed, fails to furnish information under Section 101.017 before
12 the 11th day following the date of demand;

13 (5) as a license holder or a person required to be
14 licensed, fails to settle with a producer or seller on the grade and
15 quality of perishable commodities in the manner provided by Section
16 101.015;

17 (6) ~~[as a cash dealer, pays for perishable commodities~~
18 ~~by a means other than United States currency,~~

19 ~~[(7)]~~ as a license holder or a person required to be
20 licensed, transporting agent, or buying agent, violates a provision
21 of this chapter;

22 (7) ~~[(8)] acts or assumes to act as a cash dealer~~
23 ~~without first registering as a cash dealer,~~

24 ~~[(9)]~~ as a license holder or a person required to be
25 licensed, buys or sells perishable commodities by weight and does
26 not have the perishable commodities weighed on scales that meet
27 state requirements;

1 (8) [~~(10)~~] fails to prepare and maintain records
2 required by Sections 101.016, 101.017, and 101.018; or

3 (9) [~~(11)~~] fails to provide records as required by
4 Sections 101.016 and 101.018.

5 SECTION 5.21. Subsection (a), Section 103.002, Agriculture
6 Code, is amended to read as follows:

7 (a) The produce recovery fund is a special trust fund with
8 the comptroller administered by the department, without
9 appropriation, for the payment of claims against license holders,
10 ~~[and]~~ retailers, and persons required to be licensed under Chapter
11 101.

12 SECTION 5.22. Section 103.005, Agriculture Code, is amended
13 to read as follows:

14 Sec. 103.005. INITIATION OF CLAIM. (a) A person who deals
15 with a license holder or a person required to be licensed under
16 Chapter 101 in the purchasing, handling, selling, and accounting
17 for sales of perishable commodities and who is aggrieved by an
18 action of the license holder or person required to be licensed as a
19 result of a violation of terms or conditions of a contract made by
20 the license holder or person required to be licensed for the sale of
21 Texas-grown produce may initiate a claim against the fund by filing
22 with the department:

23 (1) a sworn complaint against the license holder or
24 person required to be licensed; and

25 (2) a filing fee, as provided by department rule.

26 (b) A complaint and the fee under Subsection (a) [~~of this~~
27 ~~section~~] must be filed on or before the second [~~first~~] anniversary

1 of the date that payment was due [~~of the violation~~], or recovery
2 from the fund is barred.

3 SECTION 5.23. Section 103.0055, Agriculture Code, is
4 amended to read as follows:

5 Sec. 103.0055. BANKRUPTCY OF MERCHANT OR RETAILER. For
6 purposes of this chapter, the amount due an aggrieved party by a
7 license holder or a person required to be licensed is not affected
8 by a final judgment of a bankruptcy court that releases the license
9 holder or person required to be licensed from the legal duty to
10 satisfy the claim.

11 SECTION 5.24. Subsection (a), Section 103.006, Agriculture
12 Code, is amended to read as follows:

13 (a) After a claim is initiated, the department shall
14 investigate the complaint and determine the amount due the
15 aggrieved party. If the amount determined by the department is
16 disputed by the license holder, a person required to be licensed, or
17 the aggrieved party, the board shall conduct a hearing on the claim
18 and determine the amount due the aggrieved party.

19 SECTION 5.25. Subsection (a), Section 103.007, Agriculture
20 Code, is amended to read as follows:

21 (a) If the amount determined by the department's
22 investigation to be due the aggrieved party is not disputed by the
23 license holder, a person required to be licensed, or the aggrieved
24 party, the department shall pay the claim within the limits
25 prescribed by this chapter.

26 SECTION 5.26. Subsections (a), (b), (d), and (f), Section
27 103.008, Agriculture Code, are amended to read as follows:

1 (a) In making payments from the fund the department may
2 ~~[can]~~ pay the aggrieved party the full value of their validated
3 claim, subject to Subsections (b) and (d) ~~[all of the first \$2,000~~
4 ~~of any claim and no more than 70 percent of the claim above \$2,000]~~.

5 (b) The total payment of all claims arising from the same
6 contract with a license holder or a person required to be licensed
7 may not exceed \$50,000 ~~[\$35,000]~~.

8 (d) Payment of a claim filed against a person who is not
9 licensed in violation of Chapter 101 shall be limited to 80 percent
10 of the recovery prescribed under this section ~~[The department may~~
11 ~~not pay a claim against:~~

12 ~~[(1) a person who was not licensed on the date the~~
13 ~~contract on which the claim is based was entered into; or~~

14 ~~[(2) a cash dealer registered under Chapter 101].~~

15 (f) If a license holder or a person required to be licensed
16 owes money to the produce recovery fund at the time the license
17 holder or person required to be licensed makes a claim against the
18 fund, the department shall offset the amount owed to the fund from
19 the amount dispensed.

20 SECTION 5.27. Section 103.009, Agriculture Code, is amended
21 by amending Subsections (a), (c), and (d) and adding Subsection (e)
22 to read as follows:

23 (a) If the department pays a claim against a license holder
24 or a person required to be licensed, the license holder or person
25 required to be licensed shall:

26 (1) reimburse the fund immediately or agree in writing
27 to reimburse the fund on a schedule to be determined by rule of the

department; and

(2) immediately pay the aggrieved party any amount due that party or agree in writing to pay the aggrieved party on a schedule to be determined by rule of the department.

(c) If the license holder or person required to be licensed does not reimburse the fund or pay the aggrieved party, or does not agree to do so, in accordance with this section, the department shall issue an order canceling the license and may not issue a new license to or renew the license of that person for four years from the date of cancellation. If the license holder or person required to be licensed is a corporation, an officer or director of the corporation or a person owning more than 25 percent of the stock in the corporation may not be licensed under Chapter 101 during the four-year period in which the corporation is ineligible for licensing.

(d) Subsections (a) and (b) do ~~[This section does]~~ not apply to a license holder or a person required to be licensed who is released by a final judgment of a bankruptcy court from the legal duty to satisfy the claim paid by the department.

(e) The amount to be reimbursed under this section shall be one and one-half times the amount of the claim paid if the person required to reimburse the department was not licensed on the date on which the transaction forming the base of the claim occurred.

SECTION 5.28. Section 103.010, Agriculture Code, is amended to read as follows:

Sec. 103.010. SUBROGATION OF RIGHTS. If the department pays a claim against a license holder or a person required to be

1 licensed, the department is subrogated to all rights of the
2 aggrieved party against the license holder or person required to be
3 licensed to the extent of the amount paid to the aggrieved party.

4 SECTION 5.29. Subsection (b), Section 103.011, Agriculture
5 Code, is amended to read as follows:

6 (b) A person registered as a ~~[cash dealer or a]~~ marketing
7 association organized under Chapter 52 that handles citrus fruit
8 only for its members is exempt from payment of the fee under this
9 section.

10 SECTION 5.30. Subsections (a) and (b), Section 103.013,
11 Agriculture Code, are amended to read as follows:

12 (a) A person commits an offense if the person acts or
13 assumes to act as a license holder under Chapter 101 without first
14 paying the annual fee required by Section 103.11 ~~[this chapter]~~.

15 (b) An offense under this section is a Class B misdemeanor
16 ~~[punishable by a fine of not more than \$500]~~.

17 SECTION 5.31. Subsection (a), Section 121.005, Agriculture
18 Code, is amended to read as follows:

19 (a) Each rose plant or shipment of rose plants shall be
20 labeled with~~+~~

21 ~~[(1)]~~ the proper grade~~+, and~~

22 ~~[(2) the number of the certificate of authority of the~~
23 ~~person selling or offering for sale the plant or shipment]~~.

24 SECTION 5.32. Subsection (f), Section 52.092, Election
25 Code, is amended to read as follows:

26 (f) Precinct offices shall be listed in the following order:

27 (1) county commissioner;

(2) justice of the peace;

(3) constable[+]

~~[(4) public weigher]~~.

SECTION 5.33. Subsection (a), Section 172.024, Election Code, is amended to read as follows:

(a) The filing fee for a candidate for nomination in the general primary election is as follows:

(1)	United States senator	\$5,000
(2)	office elected statewide, except United States senator	3,750
(3)	United States representative	3,125
(4)	state senator	1,250
(5)	state representative	750
(6)	member, State Board of Education	300
(7)	chief justice or justice, court of appeals, other than a justice specified by Subdivision (8)	1,875
(8)	chief justice or justice of a court of appeals that serves a court of appeals district in which a county with a population of more than 750,000 is wholly or partly situated	2,500
(9)	district judge or judge specified by Section 52.092(d) for which this schedule does not otherwise prescribe a fee	1,500
(10)	district or criminal district judge of a court in a judicial district wholly contained in a county with a population of more than 850,000	2,500
(11)	judge, statutory county court, other than a judge	

1 specified by Subdivision (12) 1,500

2 (12) judge of a statutory county court in a county with

3 a population of more than 850,000 2,500

4 (13) district attorney, criminal district attorney,

5 or county attorney performing the duties of a district

6 attorney 1,250

7 (14) county commissioner, district clerk, county

8 clerk, sheriff, county tax assessor-collector, county treasurer,

9 or judge, constitutional county court:

10 (A) county with a population of 200,000

11 or more 1,250

12 (B) county with a population of under

13 200,000 750

14 (15) justice of the peace or constable:

15 (A) county with a population of 200,000

16 or more 1,000

17 (B) county with a population of under

18 200,000 375

19 (16) county surveyor or[~~7~~] inspector of hides and

20 animals[~~7~~, ~~or public weigher~~] 75

21 (17) office of the county government for which this

22 schedule does not otherwise prescribe a fee 750

23 SECTION 5.34. Subsection (b), Section 62.160, Labor Code,

24 is amended to read as follows:

25 (b) Sections 62.051-62.054 [~~and Subchapter C~~] do not apply

26 to an agricultural employer with respect to an employee engaged in

27 the production of livestock.

SECTION 5.35. The following statutes are repealed:

- (1) Section 13.252, Agriculture Code;
- (2) Section 13.253, Agriculture Code;
- (3) Section 13.2535, Agriculture Code;
- (4) Section 13.254, Agriculture Code;
- (5) Subsection (b), Section 52.035, Agriculture Code;
- (6) Section 52.152, Agriculture Code;
- (7) Subsection (b), Section 101.006, Agriculture Code;
- (8) Subsection (c), Section 103.008, Agriculture Code;
- (9) Section 121.004, Agriculture Code;
- (10) Subdivision (1), Section 62.002, Labor Code; and
- (11) Subchapter C, Chapter 62, Labor Code.

SECTION 5.36. (a) The changes in law made by this Act to Subchapter E, Chapter 13, Agriculture Code, do not affect the entitlement of a public weigher or deputy public weigher elected or appointed before the effective date of this Act to serve as a public weigher or deputy public weigher for the remainder of the public weigher's or deputy public weigher's term. A public weigher or deputy public weigher elected or appointed before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(b) The changes in law made by this Act to Section 103.008, Agriculture Code, apply only to a claim for payment filed on or after the effective date of this Act. A claim filed before that

date is governed by the law in effect on the date the claim was filed, and the former law is continued in effect for that purpose.

ARTICLE 6. GENERAL LICENSING PROVISIONS

SECTION 6.01. Subsections (a) and (c), Section 12.020, Agriculture Code, are amended to read as follows:

(a) If a person violates a provision of law ~~[this code]~~ described by Subsection (c) ~~[of this section]~~ or a rule or order adopted by the department under a provision of law ~~[this code]~~ described by Subsection (c) ~~[of this section]~~, the department may assess an administrative penalty against the person as provided by this section.

(c) The provisions of law ~~[this code]~~ subject to this section and the applicable penalty amounts are as follows:

Provision	Amount of Penalty
Chapter 41	<u>not more than \$5,000</u> [\$1,000]
Chapters 13, 14A, 18, 46, 61, 94, 95, 101, 102, 103, 121, 125, 132, and 134	not more than <u>\$5,000</u> [\$500]
Subchapter B, Chapter 71	
Chapter 19	
Chapter 76	not more than <u>\$5,000</u> [\$2,000]
Subchapters A and C, Chapter 71	
Chapters 72, 73, and 74	not more than \$5,000
Chapter 14	not more than \$10,000
<u>Chapter 1951, Occupations Code</u>	<u>not more than \$5,000</u>
<u>Chapter 153, Natural Resources</u>	
<u>Code</u>	<u>not more than \$5,000.</u>

SECTION 6.02. Section 12.023, Agriculture Code, is amended to read as follows:

Sec. 12.023. EXPIRATION OF REGISTRATION OR LICENSES. The department by rule shall ~~[may]~~ adopt a system under which registrations or licenses required by the department, including licenses issued under Chapter 1951, Occupations Code, expire on various dates during the year. The department may increase or decrease the term of an initial or renewal license or registration so that all licenses held by a person or a group of license holders expire on the same date. For the period ~~[year]~~ in which the registration or license expiration date is changed, registration or license fees shall be prorated on a monthly basis so that each registrant or licensee pays only that portion of the fee that is allocable to the number of months during which the registration or license is valid. On the next renewal of the registration or license ~~[on the new expiration date]~~, the total renewal fee is payable.

SECTION 6.03. Title 2, Agriculture Code, is amended by adding Chapter 12A to read as follows:

CHAPTER 12A. GENERAL LICENSING PROVISIONS

SUBCHAPTER A. POWERS AND DUTIES OF DEPARTMENT RELATED TO LICENSING

Sec. 12A.001. APPLICABILITY OF PROVISIONS. The general licensing, regulatory, and enforcement provisions of Chapter 12 and this chapter apply to licensing and regulatory programs administered by the department under any law.

Sec. 12A.002. CEASE AND DESIST ORDER. (a) If it appears to the commissioner that a person who is not licensed by the department

1 is violating a statute or rule that requires the person to hold a
2 license issued by the department or a statute or rule relating to an
3 activity regulated by the department, the commissioner after notice
4 and opportunity for a hearing may issue a cease and desist order
5 prohibiting the person from engaging in the activity.

6 (b) A violation of an order under this section constitutes
7 grounds for imposing an administrative penalty.

8 Sec. 12A.003. RISK-BASED INSPECTIONS. For each person
9 licensed or regulated by the department that the department may
10 inspect:

11 (1) the department may conduct additional inspections
12 based on a schedule of risk-based inspections using the following
13 criteria:

14 (A) the type and nature of the person;
15 (B) whether there has been a prior violation by
16 the person;

17 (C) the inspection history of the person;
18 (D) any history of complaints involving the
19 person; and

20 (E) any other risk-based factor identified by the
21 department; and

22 (2) the department may waive any inspection
23 requirement under law if an emergency arises or to accommodate
24 complaint investigation or risk-based inspection schedules.

25 [Sections 12A.004-12A.050 reserved for expansion]

26 SUBCHAPTER B. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

27 Sec. 12A.051. INFORMATION REGARDING COMPLAINTS AND

1 ENFORCEMENT PROCESS. (a) The department shall:

2 (1) inform applicants, license holders, and the public
3 on the department's Internet website, in department brochures, and
4 on any other available information resource about the department's
5 enforcement process, including each step in the complaint
6 investigation and resolution process, from initial filing through
7 final appeal, and the opportunity to request an informal settlement
8 conference; and

9 (2) inform license holders that a license holder may
10 obtain information about a complaint made against the license
11 holder and may obtain on request a copy of the complaint file.

12 (b) Except as provided by Subsection (d), the department
13 shall provide to a license holder against whom a complaint has been
14 filed:

15 (1) the allegations made against the license holder in
16 the complaint; and

17 (2) on the license holder's request, any information
18 obtained by the department in its investigation of the complaint.

19 (c) The department shall provide the information required
20 under Subsection (b) in a timely manner to allow the license holder
21 time to respond to the complaint.

22 (d) The department is not required to provide the following
23 information to a license holder:

24 (1) the name of a confidential informant whose
25 testimony will not be used in any hearing as evidence against the
26 license holder;

27 (2) attorney-client communications;

1 (3) attorney work product; or

2 (4) any other information that is confidential or not
3 subject to disclosure under law, rule of evidence, or rule of civil
4 procedure.

5 Sec. 12A.052. COMPLAINT AND VIOLATION ANALYSIS. The
6 department shall analyze complaints filed with and violations
7 discovered by the department to identify any trends or issues
8 related to certain violations, including:

9 (1) the reason for each complaint or violation;

10 (2) how each complaint or violation was resolved; and

11 (3) the subject matter of each complaint or violation
12 that was not within the jurisdiction of the department and how the
13 department responded to the complaint or violation.

14 [Sections 12A.053-12A.100 reserved for expansion]

15 SUBCHAPTER C. ISSUANCE AND RENEWAL OF LICENSES

16 Sec. 12A.101. REPLACEMENT LICENSE; FEE. The department
17 shall issue to a license holder whose license has been lost or
18 destroyed or whose name has been changed a replacement license if
19 the license holder submits to the department:

20 (1) an appropriate application; and

21 (2) a fee in an amount established by department rule.

22 [Sections 12A.102-12A.150 reserved for expansion]

23 SUBCHAPTER D. EXAMINATIONS

24 Sec. 12A.151. EXAMINATION PROCEDURES. For each licensing
25 examination administered by the department, the department shall:

26 (1) adopt policies and guidelines detailing the
27 procedures for the testing process, including test admission and

1 internal test administration procedures; and

2 (2) post on the department's Internet website the
3 policies that reference the testing procedures.

4 Sec. 12A.152. EVALUATION OF EXAMINATION QUESTIONS. For
5 each licensing examination administered by the department, the
6 department shall periodically evaluate the effectiveness of
7 examination questions in objectively assessing an applicant's
8 knowledge.

9 [Sections 12A.153-12A.200 reserved for expansion]

10 SUBCHAPTER E. PENALTIES AND ENFORCEMENT PROCEDURES

11 Sec. 12A.201. INFORMAL PROCEEDINGS. (a) The department by
12 rule shall adopt procedures governing:

13 (1) informal disposition of a contested case under
14 Section 2001.056, Government Code; and

15 (2) an informal proceeding held in compliance with
16 Section 2001.054, Government Code.

17 (b) The department shall offer the opportunity to conduct an
18 informal settlement conference by telephone.

19 (c) The department shall:

20 (1) provide a license holder sufficient opportunity to
21 indicate whether the terms of a proposed order are acceptable to the
22 license holder;

23 (2) indicate in the notice of violation that the
24 license holder has the opportunity described by Subdivision (1);
25 and

26 (3) allow a license holder who does not agree with a
27 proposed order to request an informal settlement conference.

SECTION 6.04. The heading to Section 76.113, Agriculture Code, is amended to read as follows:

Sec. 76.113. TERM ~~[EXPIRATION]~~ AND RENEWAL OF LICENSES.

SECTION 6.05. Subsection (a), Section 76.113, Agriculture Code, is amended to read as follows:

(a) Each pesticide ~~[commercial applicator or noncommercial]~~ applicator license issued under this chapter, other than a private applicator license, expires at the end of the license period established by department rule ~~[on the first anniversary of the date on which it was issued or renewed]~~.

SECTION 6.06. Section 76.151, Agriculture Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) The ~~[For the purpose of inspection, examination, or sampling, the]~~ department, at any time and without notice during regular business hours, may:

(1) ~~[is entitled to]~~ enter and inspect a ~~[at reasonable hours any]~~ building or place owned, controlled, or operated by a person engaged in any activity regulated under this chapter or Chapter 1951, Occupations Code; and

(2) inspect and review any record maintained by a person engaged in any activity regulated under this chapter or Chapter 1951, Occupations Code ~~[registrant or dealer if from probable cause it appears that the building or place contains a pesticide]~~.

(a-1) The department may enter and inspect a building or place or inspect and review any record under Subsection (a) as

1 necessary to:

2 (1) ensure compliance with this chapter or Chapter
3 1951, Occupations Code; or

4 (2) investigate a complaint made to the department.

5 SECTION 6.07. Subsection (a), Section 76.1555, Agriculture
6 Code, is amended to read as follows:

7 (a) If a person violates a provision of this chapter or
8 Chapter 1951, Occupations Code, or a rule or order adopted by the
9 department under this chapter or Chapter 1951, Occupations Code,
10 the department may assess an administrative penalty against the
11 person as provided by Section 12.020, except that the penalty for
12 each violation may ~~[shall]~~ not exceed \$5,000 ~~[\$4,000 for all~~
13 ~~violations related to a single incident]~~. Each day a violation
14 continues or occurs may be considered a separate violation for
15 purposes of penalty assessment.

16 SECTION 6.08. Section 132.024, Agriculture Code, is amended
17 to read as follows:

18 Sec. 132.024. LICENSE TERM ~~[EXPIRATION]~~. A license issued
19 or renewed under this chapter is valid for one year ~~[expires on the~~
20 ~~first anniversary of the date of issuance or renewal]~~.

21 SECTION 6.09. The changes in law made by this article to
22 Subsection (c), Section 12.020 and Subsection (a), Section 76.1555,
23 Agriculture Code, apply only to a violation committed on or after
24 the effective date of this Act. A violation committed before the
25 effective date of this Act is governed by the law in effect on the
26 date the violation occurred, and the former law is continued in
27 effect for that purpose.

ARTICLE 7. STRUCTURAL PEST CONTROL

SECTION 7.01. Section 12.0201, Agriculture Code, is amended to read as follows:

Sec. 12.0201. LICENSE SANCTIONS. (a) In addition to other sanctions provided by law, the department may revoke, modify, suspend, or refuse to issue or renew a license, assess an administrative penalty, place on probation a person whose license has been suspended, or reprimand a license holder if the department finds that the practitioner:

(1) violated a provision of this code or Chapter 1951, Occupations Code;

(2) violated a rule adopted by the department under this code or Chapter 1951, Occupations Code; or

(3) after appropriate notice, failed to comply with an order of the department.

(b) In addition to any other actions permitted under this code or Chapter 1951, Occupations Code, if a license suspension is probated, the department may require the practitioner:

(1) to maintain additional information in the practitioner's records;

(2) to report regularly to the department on matters that are the basis of the probation;

(3) to limit practice to the areas prescribed by the department; or

(4) to continue or review professional education until the practitioner attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

SECTION 7.02. Subchapter A, Chapter 1951, Occupations Code, is amended by adding Section 1951.007 to read as follows:

Sec. 1951.007. APPLICABILITY OF AGRICULTURE CODE LICENSING PROVISIONS. A provision of the Agriculture Code that applies generally to licensing or regulatory programs administered by the department, including a provision that refers generally to licensing or regulatory programs under the Agriculture Code, applies to this chapter.

SECTION 7.03. Subsection (a), Section 1951.053, Occupations Code, is amended to read as follows:

(a) Except as provided by Sections 1951.212 and 1951.457(c), this chapter does not apply to:

(1) a person who performs pest control work on growing plants, trees, shrubs, grass, or other horticultural plants if the person[÷

~~[(A) holds a florist or nursery registration certificate from the department under Section 71.043, Agriculture Code, other than a registration certificate that permits the sale, lease, or distribution of nursery products or floral items only at a temporary market, and~~

~~[(B)]~~ holds a commercial or noncommercial applicator license from the department and issued under Chapter 76, Agriculture Code, that covers the pest control work; or

(2) a person who performs pest control work on growing plants, trees, shrubs, grass, or other horticultural plants or rights-of-way if the person:

(A) is employed by a political subdivision or a

1 cemetery;

2 (B) is engaged in pest control work or vegetation
3 management for the political subdivision or cemetery;

4 (C) holds a commercial or noncommercial
5 applicator license from the department and issued under Chapter 76,
6 Agriculture Code, that covers pest control work or is under the
7 direct supervision of a person who holds a commercial or
8 noncommercial applicator license from the department and issued
9 under Chapter 76, Agriculture Code, that covers pest control work;
10 and

11 (D) complies with annual continuing education
12 required by the department.

13 SECTION 7.04. Subsection (a), Section 1951.207,
14 Occupations Code, is amended to read as follows:

15 (a) The department by rule shall adopt a policy that[+
16 ~~[(1)]~~ requires a business holding a structural pest
17 control business license to be inspected by a field inspector at
18 least once:

19 (1) ~~[(A)]~~ in the business's first year of operation;
20 and

21 (2) ~~[(B)]~~ every four years after the first year of
22 operation[+]

23 ~~[(2) provides for additional inspections based on a~~
24 ~~schedule of risk-based inspections using the following criteria:~~

25 ~~[(A) the type and nature of the business,~~

26 ~~[(B) whether there has been a prior violation by~~
27 ~~the business,~~

1 ~~[(C) the inspection history of the business,~~
2 ~~[(D) any history of complaints involving the~~
3 ~~business; and~~
4 ~~[(E) any other factor determined by the~~
5 ~~department by rule; and~~
6 ~~[(3) provides that the department may waive the~~
7 ~~inspection requirement on a case-by-case basis if an emergency~~
8 ~~arises or to accommodate complaint investigation schedules].~~

9 SECTION 7.05. Subsection (f), Section 1951.254,
10 Occupations Code, as amended by Chapters 885 (H.B. 2278) and 890
11 (H.B. 2458), Acts of the 80th Legislature, Regular Session, 2007,
12 is reenacted to read as follows:

13 (f) The information sheet must include:

14 (1) the names and telephone numbers of the department
15 and the Department of State Health Services;

16 (2) the telephone number of any pesticide hotline
17 established by a state or federal agency or by a state university;

18 (3) a statement of a consumer's rights under Chapter
19 601, Business & Commerce Code, to cancel a home solicitation
20 transaction; and

21 (4) information concerning the availability of any
22 pretreatment inspection service that may be provided by the
23 department under Section 1951.210.

24 SECTION 7.06. Subsection (a), Section 1951.306,
25 Occupations Code, is amended to read as follows:

26 (a) The department may waive any license requirement under
27 this chapter for an applicant who holds a license issued by another

1 state that has license requirements substantially equivalent to
2 those of this state. The department may enter into reciprocal
3 licensing agreements with other states that have license
4 requirements substantially equivalent to those of this state.

5 SECTION 7.07. The following provisions of the Occupations
6 Code are repealed:

- 7 (1) Section 1951.202;
- 8 (2) Section 1951.310;
- 9 (3) Section 1951.311;
- 10 (4) Subsections (c) and (d), Section 1951.501;
- 11 (5) Subchapter L, Chapter 1951;
- 12 (6) Section 1951.604; and
- 13 (7) Section 1951.605.

14 SECTION 7.08. The changes in law made by this Act by the
15 repeal of Subsections (c) and (d), Section 1951.501, Occupations
16 Code, apply only to a violation of Chapter 1951, Occupations Code,
17 committed on or after the effective date of this Act. A violation
18 committed before the effective date of this Act is governed by the
19 law in effect on the date the violation occurred, and the former law
20 is continued in effect for that purpose. A violation committed on
21 or after the effective date of this Act is governed by Section
22 12.0201, Agriculture Code, as amended by this Act, and other
23 applicable law.

24 SECTION 7.09. The change in law made by this Act by the
25 repeal of Section 1951.310, Occupations Code, applies only to the
26 renewal of a license under Chapter 1951, Occupations Code, that
27 expires on or after the effective date of this Act. The renewal of a

1 license that expires before the effective date of this Act is
2 governed by the law in effect on the date the license expired, and
3 the former law is continued in effect for that purpose. An
4 application submitted on or after the effective date of this Act is
5 governed by Section 12.024, Agriculture Code, and other applicable
6 law.

7 SECTION 7.10. The change in law made by this Act by the
8 repeal of Section 1951.311, Occupations Code, applies only to an
9 application for a replacement license issued under Chapter 1951,
10 Occupations Code, submitted on or after the effective date of this
11 Act. An application submitted before the effective date of this Act
12 is governed by the law in effect on the date the application was
13 submitted, and the former law is continued in effect for that
14 purpose. An application submitted on or after the effective date of
15 this Act is governed by Section 12A.101, Agriculture Code, as added
16 by this Act, and other applicable law.

17 SECTION 7.11. The change in law made by this Act by the
18 repeal of Subchapter L, Chapter 1951, Occupations Code, applies
19 only to a violation committed on or after the effective date of this
20 Act. A violation committed before that date is governed by the law
21 in effect on the date the violation occurred, and the former law is
22 continued in effect for that purpose. A violation committed on or
23 after the effective date of this Act is governed by Section 12.020,
24 Agriculture Code, as amended by this Act, and other applicable law.

25 ARTICLE 8. SUNSET DATE AND ACROSS-THE-BOARD RECOMMENDATIONS

26 SECTION 8.01. Section 11.003, Agriculture Code, is amended
27 to read as follows:

1 Sec. 11.003. SUNSET PROVISION. The Department of
2 Agriculture is subject to Chapter 325, Government Code (Texas
3 Sunset Act). Unless continued in existence as provided by that
4 chapter, the department is abolished September 1, 2021 [2009].

5 SECTION 8.02. Section 12.0135, Agriculture Code, is amended
6 to read as follows:

7 Sec. 12.0135. CONFLICT PROVISIONS. (a) A person may not be
8 a department employee employed in a "bona fide executive,
9 administrative, or professional capacity," as that phrase is used
10 for purposes of establishing an exemption to the overtime
11 provisions of the federal Fair Labor Standards Act of 1938 (29
12 U.S.C. Section 201 et seq.), if:

13 (1) the person is an officer, employee, or paid
14 consultant of a Texas trade association in the field of
15 agriculture; or

16 (2) the person's spouse is an officer, manager, or paid
17 consultant of a Texas trade association in the field of
18 agriculture.

19 (b) A person may not act as the general counsel to the
20 commissioner or the department if the person is required to
21 register as a lobbyist under Chapter 305, Government Code, because
22 of the person's activities for compensation on behalf of a
23 profession related to the operation of the department.

24 (c) ~~In [(b) An officer, employee, or paid consultant of a~~
25 ~~statewide Texas trade association or an affiliate of a national~~
26 ~~trade association in the field of agriculture may not be an employee~~
27 ~~of the department who is exempt from the state's position~~

~~classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.~~

~~[(c) A person who is the spouse of an officer, manager, or paid consultant of a statewide Texas trade association or an affiliate of a national trade association in the field of agriculture may not be an employee of the department who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.~~

~~[(d) For the purposes of]~~ this section, "Texas ~~[a]~~ trade association" means ~~[is]~~ a ~~[nonprofit,~~ cooperative ~~[7]~~ and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

SECTION 8.03. Chapter 12, Agriculture Code, is amended by adding Section 12.0203 to read as follows:

Sec. 12.0203. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION. (a) The commissioner shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of department rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the

1 resolution of internal and external disputes under the department's
2 jurisdiction.

3 (b) The department's procedures relating to alternative
4 dispute resolution must conform, to the extent possible, to any
5 model guidelines issued by the State Office of Administrative
6 Hearings for the use of alternative dispute resolution by state
7 agencies.

8 (c) The commissioner shall designate a trained person to:

9 (1) coordinate the implementation of the policy
10 adopted under Subsection (a);

11 (2) serve as a resource for any training needed to
12 implement the procedures for negotiated rulemaking or alternative
13 dispute resolution; and

14 (3) collect data concerning the effectiveness of those
15 procedures, as implemented by the department.

16 SECTION 8.04. Chapter 12, Agriculture Code, is amended by
17 adding Section 12.047 to read as follows:

18 Sec. 12.047. USE OF TECHNOLOGY. The commissioner shall
19 implement a policy requiring the department to use appropriate
20 technological solutions to improve the department's ability to
21 perform its functions. The policy must ensure that the public is
22 able to interact with the department on the Internet.

23 ARTICLE 9. ADDITIONAL PROVISIONS

24 SECTION 9.01. Section 12.022, Agriculture Code, is amended
25 to read as follows:

26 Sec. 12.022. AUTHORITY TO SOLICIT AND ACCEPT GIFTS, GRANTS,
27 AND DONATIONS. The department may solicit and ~~[is authorized to]~~

1 accept gifts, grants, and donations of money, services, or property
 2 from any person. Money received by the department under this
 3 section may be expended or distributed for any public purpose
 4 related to the department's duties [~~and shall file annually with~~
 5 ~~the governor and the presiding officer of each house of the~~
 6 ~~legislature a complete and detailed written report accounting for~~
 7 ~~all gifts, grants, and donations received and disbursed, used, or~~
 8 ~~maintained by the department during the preceding fiscal year.~~
 9 ~~This report shall be included in the annual report required by~~
 10 ~~Section 12.014 of this chapter].~~

11 SECTION 9.02. Chapter 12, Agriculture Code, is amended by
 12 adding Section 12.046 to read as follows:

13 Sec. 12.046. TEXAS RURAL INVESTMENT FUND. (a) In this
 14 section:

15 (1) "Fund" means the Texas Rural Investment Fund.

16 (2) "Rural community" means a municipality with a
 17 population of less than 50,000 or a county with a population of less
 18 than 200,000.

19 (b) The fund is a dedicated account in the general revenue
 20 fund and consists of:

21 (1) appropriations of money to the fund by the
 22 legislature;

23 (2) gifts, grants, including federal grants, and other
 24 donations received for the fund; and

25 (3) interest earned on the investment of money in the
 26 fund.

27 (c) The fund may be used by the department only to:

1 (1) pay for grants or loans to public or private
2 entities for projects in rural communities that have strong local
3 support, provide positive return on the state's investment, and
4 stimulate one or more of the following:

- 5 (A) local entrepreneurship;
6 (B) job creation or retention;
7 (C) new capital investment;
8 (D) strategic economic development planning;
9 (E) individual economic and community
10 development leadership training;
11 (F) housing development; or
12 (G) innovative workforce education; and

13 (2) administer the grant and loan program under this
14 section.

15 (d) In awarding a grant or loan of money from the fund for a
16 project, the department shall consider:

- 17 (1) the project's effect on job creation and wages;
18 (2) the financial strength of the applicant;
19 (3) the applicant's business history;
20 (4) an analysis of the relevant business sector;
21 (5) whether there is public or private sector
22 financial support for the project; and
23 (6) whether there is local support for the project.

24 (e) The fund is exempt from the application of Sections
25 403.095 and 404.071, Government Code.

26 (f) The department may accept grants, gifts, or donations
27 from any source that are made for the purposes of this section.

1 Money received under this subsection shall be deposited in the
2 fund.

3 (g) The department shall adopt rules to administer this
4 section.

5 SECTION 9.03. Subsection (a), Section 19.012, Agriculture
6 Code, is amended to read as follows:

7 (a) A person commits an offense if the person:

8 (1) sells or offers to sell citrus budwood or a citrus
9 nursery tree falsely claiming that it is certified or that it comes
10 from a designated foundation grove; ~~or~~

11 (2) uses citrus budwood that is not certified, or does
12 not come from a designated foundation grove, for commercial
13 purposes that require certification under department rule; or

14 (3) fails to comply with an order of the department
15 issued under this chapter.

16 SECTION 9.04. Section 19.014, Agriculture Code, is amended
17 to read as follows:

18 Sec. 19.014. ADMINISTRATIVE PENALTIES. The department may
19 assess an administrative penalty under Chapter 12 for a violation
20 of this chapter if the department finds that a person:

21 (1) sells or offers to sell citrus budwood or a citrus
22 nursery tree falsely claiming that it is certified or that it comes
23 from a designated foundation grove under this chapter;

24 (2) uses citrus budwood in violation of rules adopted
25 under this chapter; ~~or~~

26 (3) uses citrus budwood that is not certified, or does
27 not come from a designated foundation grove, for commercial

1 purposes that require certification under department rule; or

2 (4) fails to comply with an order of the department
3 issued under this chapter.

4 SECTION 9.05. Section 41.151, Agriculture Code, is amended
5 to read as follows:

6 Sec. 41.151. DEFINITIONS. In this subchapter:

7 (1) "Beef products" means products produced in whole
8 or in part from beef. The term does not include milk or products
9 made from milk.

10 (2) [~~"Board" means the board of directors of the Texas~~
11 ~~Beef Council.~~

12 [~~(3)~~] "Council" means the Texas Beef Council.

13 (3) [~~(4)~~] "Producer" means a person who owns or
14 acquires ownership of cattle, except that a person is not a producer
15 if the person's only share in the proceeds of a sale of cattle or
16 beef is a sales commission, handling fee, or other service fee.

17 SECTION 9.06. Subsection (b), Section 41.152, Agriculture
18 Code, is amended to read as follows:

19 (b) The council shall be the certified organization
20 [~~recognized as the entity~~] to plan, implement, and operate
21 research, education, promotion, and marketing programs under this
22 subchapter. The council is the state beef council qualified to
23 collect the proceeds of and administer in this state the beef check
24 off program established by federal law.

25 SECTION 9.07. Section 41.156, Agriculture Code, is amended
26 to read as follows:

27 Sec. 41.156. COUNCIL [~~BOARD~~] MEMBERS. (a) The council

1 ~~[board]~~ is composed of 20 ~~[21]~~ members appointed by the
2 commissioner as follows:

3 (1) three representatives of the Texas and
4 Southwestern Cattle Raisers Association;

5 (2) three representatives of the Texas Cattle Feeders
6 Association;

7 (3) three representatives of the Texas Farm Bureau;

8 (4) two representatives of the Independent Cattlemen's
9 Association of Texas;

10 (5) two representatives of the Texas purebred cattle
11 industry;

12 (6) two representatives of the Texas dairy industry;

13 (7) one representative ~~[two representatives]~~ of the
14 Livestock Marketing Association of Texas;

15 (8) one representative of meat packer and exporter
16 associations;

17 (9) one representative of Texas CattleWomen; and

18 (10) two at-large directors.

19 (b) A council ~~[board]~~ member serves a one-year term or until
20 his or her successor is appointed. A council member may serve not
21 more than six consecutive one-year terms. Members of the council
22 may nominate persons for appointment to vacancies created by
23 expiring or expired terms.

24 (c) The commissioner, on recommendation of the council,
25 shall fill a vacancy on the council ~~[board]~~ by appointment for the
26 unexpired term.

27 SECTION 9.08. Section 41.157, Agriculture Code, is amended

to read as follows:

Sec. 41.157. GENERAL POWERS OF COUNCIL. The council may take action or exercise other authority as necessary to execute any act authorized by this chapter [~~subchapter~~] or the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes).

SECTION 9.09. Subsections (b), (c), and (e), Section 41.160, Agriculture Code, are amended to read as follows:

(b) If an assessment referendum is approved, the council shall recommend to the commissioner an assessment amount not greater than the maximum amount approved in the referendum. After the assessment is approved by the commissioner, the council shall collect the assessment.

(c) An assessment levied on producers shall [~~may~~] be applied by the council to efforts relating to the marketing, education, research, and promotion of beef and beef products in Texas, the United States, and international markets, including administrative costs of conducting an assessment referendum.

(e) Section 41.083 applies to an assessment collected by the council under this subchapter. Section 41.082 does not apply to an assessment collected under this subchapter. The commissioner, on the council's recommendation, may exempt from the assessment certain producers who are exempt under federal law.

SECTION 9.10. Subsection (a), Section 41.161, Agriculture Code, is amended to read as follows:

(a) The commissioner shall annually review and approve the council's operating budget for the funds collected under this

1 subchapter.

2 SECTION 9.11. Subsection (g), Section 41.162, Agriculture
3 Code, is amended to read as follows:

4 (g) The council shall pay all expenses incurred in
5 conducting a referendum with funds collected from the beef
6 industry.

7 SECTION 9.12. Subsection (d), Section 71.004, Agriculture
8 Code, is amended to read as follows:

9 (d) An emergency quarantine shall be established in
10 accordance with the provisions related to emergency rulemaking in
11 Chapter 2001, Government Code [~~expires 30 days following the date~~
12 ~~on which it was established unless reestablished following notice~~
13 ~~and hearing as provided by this subchapter~~].

14 SECTION 9.13. Subsection (b), Section 72.002, Agriculture
15 Code, is amended to read as follows:

16 (b) The department may adopt rules [~~, to be proclaimed by the~~
17 ~~governor,~~] as necessary for the administration of this chapter.

18 SECTION 9.14. Subsections (a) and (b), Section 72.011,
19 Agriculture Code, are amended to read as follows:

20 (a) When advised of the existence of Mexican fruit fly
21 within a county or part of a county in this state, the department
22 shall certify that fact and [~~to the governor, and the governor~~
23 ~~shall~~] proclaim the county or part of a county quarantined under
24 this chapter.

25 (b) If the department determines that the exigencies of the
26 situation require a modified quarantine, the department may
27 designate a modified quarantined area [~~to be certified to the~~

1 ~~governor for proclamation]~~.

2 SECTION 9.15. Section 72.012, Agriculture Code, is amended
3 to read as follows:

4 Sec. 72.012. PERSONS AND PREMISES SUBJECT. The premises of
5 each individual, whether an owner, lessee, renter, tenant, or
6 occupant, within the area named in the quarantine [~~proclamation~~]
7 are subject to the quarantine, even though not specifically named.

8 SECTION 9.16. Subsection (a), Section 72.015, Agriculture
9 Code, is amended to read as follows:

10 (a) A person may not haul, truck, or otherwise move citrus
11 fruit from any premises or area that is under quarantine for Mexican
12 fruit fly infestation by this chapter or [~~7~~] by order of the
13 department[~~, or by proclamation of the governor~~] in violation of
14 the quarantine without a written permit or certificate issued by
15 the department or an inspector of the Plant Protection and
16 Quarantine Programs, Animal and Plant Health Inspection Service,
17 United States Department of Agriculture.

18 SECTION 9.17. Subsection (a), Section 76.004, Agriculture
19 Code, is amended to read as follows:

20 (a) The [~~Except as provided by Subchapter C, after notice,~~
21 ~~the department shall conduct at least five regional hearings~~
22 ~~throughout the state before the adoption of any rule for carrying~~
23 ~~out the provisions of this chapter. Thereafter, the]~~ department
24 may adopt rules for carrying out the provisions of this chapter,
25 including rules providing for:

26 (1) the collection, examination, and reporting of
27 records, devices, and samples of pesticides;

1 (2) the safe handling, transportation, storage,
2 display, distribution, or disposal of pesticides and pesticide
3 containers;

4 (3) labeling requirements for pesticides and devices
5 required to be registered under this chapter; and

6 (4) compliance with federal pesticide rules and
7 regulations.

8 SECTION 9.18. The following provisions are repealed:

9 (1) Section 12.017, Agriculture Code;

10 (2) Section 72.003, Agriculture Code;

11 (3) Subsection (c), Section 72.011, Agriculture Code;
12 and

13 (4) Section 76.005, Agriculture Code.

14 SECTION 9.19. (a) The change in law made by this Act to
15 Section 19.012, Agriculture Code, applies only to an offense
16 committed on or after the effective date of this Act. An offense
17 committed before the effective date of this Act is covered by the
18 law in effect when the offense was committed, and the former law is
19 continued in effect for that purpose. For purposes of this
20 subsection, an offense was committed before the effective date of
21 this Act if any element of the offense was committed before that
22 date.

23 (b) The change in law made by this Act to Section 19.014,
24 Agriculture Code, applies only to conduct that occurred on or after
25 the effective date of this Act. Conduct that occurred before the
26 effective date of this Act is governed by the law in effect when the
27 conduct occurred, and the former law is continued in effect for that

1 purpose.

2 (c) The change in law made by this Act to Section 41.156,
3 Agriculture Code, does not affect the entitlement of a member of the
4 board of directors of the Texas Beef Council to serve for the
5 remainder of the member's term. A board member appointed before the
6 effective date of this Act is governed by the law in effect
7 immediately before the effective date of this Act, and the former
8 law is continued in effect for that purpose.

9 (d) The change in law made by this Act to Section 41.160,
10 Agriculture Code, applies only to an assessment approved on or
11 after the effective date of this Act. An assessment approved before
12 the effective date of this Act is governed by the law in effect
13 immediately before the effective date of this Act, and the former
14 law is continued in effect for that purpose.

15 (e) The change in law made by this Act to Section 41.162,
16 Agriculture Code, applies only to an assessment referendum
17 conducted on or after the effective date of this Act. An assessment
18 referendum conducted before the effective date of this Act is
19 governed by the law in effect immediately before the effective date
20 of this Act, and the former law is continued in effect for that
21 purpose.

22 (f) The changes in law made by this Act by the amendment of
23 Section 76.004, Agriculture Code, and the repeal of Section 76.005,
24 Agriculture Code, apply only to a public hearing held on or after
25 the effective date of this Act. A public hearing held before the
26 effective date of this Act is governed by the law in effect
27 immediately before the effective date of this Act, and the former

1 law is continued in effect for that purpose.

2 (g) Section 9.02 of this Act does not make an appropriation.
3 A provision in Section 9.02 of this Act that creates a new
4 governmental program, creates a new entitlement, or imposes a new
5 duty on a governmental entity is not mandatory during a fiscal
6 period for which the legislature has not made a specific
7 appropriation to implement the provision. A change in law made by
8 Section 9.02 of this Act may not receive an appropriation of more
9 than \$4,000,000 during the fiscal period in which the legislation
10 becomes effective.

11 ARTICLE 10. EFFECTIVE DATE

12 SECTION 10.01. This Act takes effect September 1, 2009.