

1-1 By: Hinojosa S.B. No. 1779
1-2 (In the Senate - Filed March 11, 2009; March 20, 2009, read
1-3 first time and referred to Committee on Agriculture and Rural
1-4 Affairs; April 20, 2009, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 5, Nays 0;
1-6 April 20, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1779 By: Hinojosa

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

1-10 relating to the establishment of the official citrus producers'
1-11 pest and disease management corporation; providing penalties.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subtitle B, Title 5, Agriculture Code, is
1-14 amended by adding Chapter 80 to read as follows:

1-15 CHAPTER 80. OFFICIAL CITRUS PRODUCERS' PEST AND DISEASE
1-16 MANAGEMENT CORPORATION

1-17 Sec. 80.001. FINDINGS AND DECLARATION OF POLICY. (a) The
1-18 legislature finds that:

1-19 (1) the insect known as the Asian citrus psyllid and
1-20 the disease known as citrus greening are public nuisances and
1-21 menaces to the citrus industry, and their control and suppression
1-22 is a public necessity;

1-23 (2) because of the natural migration patterns of the
1-24 Asian citrus psyllid, the control and suppression of the nuisance
1-25 can best be accomplished by dividing the commercial citrus-growing
1-26 areas into separate zones so that integrated pest management
1-27 programs may be developed for each zone;

1-28 (3) there is a need for a quasi-governmental entity
1-29 acting under the supervision and control of the commissioner whose
1-30 members are actual citrus producers who would be represented on the
1-31 board of the entity by directors elected by them to manage control
1-32 and suppression programs and to furnish expertise in the field of
1-33 insect control and suppression, because such an entity would
1-34 enhance the interest and participation of citrus producers in the
1-35 program;

1-36 (4) citrus producers, in partnership with the state
1-37 and federal governments, have made significant investments toward
1-38 the suppression of these pests and disease in this state; and

1-39 (5) it is essential to the well-being of the citrus
1-40 industry and the agricultural economy of this state that the
1-41 investments of the citrus producers and the state and federal
1-42 governments be protected.

1-43 (b) It is the intent of the legislature that the program of
1-44 control and suppression of the Asian citrus psyllid be carried out
1-45 with the best available integrated pest management techniques.

1-46 (c) The department may recover costs for administration of
1-47 this chapter.

1-48 Sec. 80.002. DESIGNATION OF ENTITY TO CARRY OUT ASIAN
1-49 CITRUS PSYLLID AND CITRUS GREENING CONTROL AND SUPPRESSION.

1-50 (a) The Texas Citrus Pest and Disease Management Corporation,
1-51 Inc., a Texas nonprofit corporation, shall be recognized by the
1-52 department as the entity to plan, carry out, and operate
1-53 suppression programs to manage and control the Asian citrus psyllid
1-54 and citrus greening in citrus plants in the state under the
1-55 supervision of the department as provided by this chapter.

1-56 (b) The commissioner may terminate the corporation's
1-57 designation as the entity recognized to carry out Asian citrus
1-58 psyllid control and management by giving 45 days' written notice to
1-59 the corporation and by designating a successor entity. If the
1-60 commissioner designates a successor to the corporation, the
1-61 successor has all the powers and duties of the corporation under
1-62 this chapter. Any successor to the corporation shall assume and
1-63 shall be responsible for all obligations and liabilities relating

- 2-1 to any notes, security agreements, assignments, loan agreements,
 2-2 and any other contracts or other documents entered into by the
 2-3 corporation with or for the benefit of any financial institution or
 2-4 its predecessor, successor, or assignee.
- 2-5 Sec. 80.003. DEFINITIONS. In this chapter:
- 2-6 (1) "Board" means the board of directors of the Texas
 2-7 Citrus Pest and Disease Management Corporation, Inc.
- 2-8 (2) "Asian citrus psyllid" means Diaphorina citri
 2-9 Kuwayama.
- 2-10 (3) "Commissioner" means the commissioner of
 2-11 agriculture.
- 2-12 (4) "Citrus" means:
 2-13 (A) a citrus plant;
 2-14 (B) a part of a citrus plant, including trees,
 2-15 limbs, flowers, roots, and leaves; or
 2-16 (C) citrus products.
- 2-17 (5) "Citrus greening" means the disease caused by the
 2-18 Asian citrus psyllid.
- 2-19 (6) "Citrus producer" means a person who grows citrus
 2-20 and receives income from the sale of citrus. The term includes an
 2-21 individual who as owner, landlord, tenant, or sharecropper is
 2-22 entitled to share in the citrus grown and available for marketing
 2-23 from a farm or to share in the proceeds from the sale of the citrus
 2-24 from the farm.
- 2-25 (7) "Suppression" means control of the numbers and
 2-26 migration of the Asian citrus psyllid to the extent that the
 2-27 commissioner does not consider further management of the Asian
 2-28 citrus psyllid necessary to prevent economic loss to citrus
 2-29 producers.
- 2-30 (8) "Pest management zone" means a geographic area
 2-31 designated by the commissioner in accordance with Section 80.005 in
 2-32 which citrus producers by referendum approve their participation in
 2-33 a citrus pest control program.
- 2-34 (9) "Corporation" means the Texas Citrus Pest and
 2-35 Disease Management Corporation, Inc., a Texas nonprofit
 2-36 corporation.
- 2-37 (10) "Host" means a plant or plant product in which the
 2-38 Asian citrus psyllid is capable of completing any portion of its
 2-39 life cycle.
- 2-40 (11) "Infested" means the presence of the Asian citrus
 2-41 psyllid in any life stage or the existence of generally accepted
 2-42 entomological evidence from which it may be concluded with
 2-43 reasonable certainty that the Asian citrus psyllid is present.
- 2-44 (12) "Integrated pest management" means the
 2-45 coordinated use of pest and environmental information with
 2-46 available pest control methods, including pesticides, natural
 2-47 predator controls, cultural farming practices, and climatic
 2-48 conditions, to prevent unacceptable levels of pest damage by the
 2-49 most economical means and with the least possible hazard to people,
 2-50 property, and the environment.
- 2-51 (13) "Regulated article" means an article carrying or
 2-52 capable of carrying the Asian citrus psyllid, including citrus
 2-53 plants, nursery plants, citrus rootstock, or other hosts.
- 2-54 Sec. 80.004. ADVISORY COMMITTEES. (a) The commissioner
 2-55 may appoint an advisory committee for an existing pest management
 2-56 zone or an area of the state that is to be considered by the
 2-57 commissioner for designation as or inclusion in a pest management
 2-58 zone. The committee shall gather advice, input, and guidance from
 2-59 citrus producers from the area represented by the committee
 2-60 concerning the interest in and concerns about the implementation of
 2-61 this chapter.
- 2-62 (b) Each advisory committee may consider and make
 2-63 recommendations to the commissioner and the corporation
 2-64 concerning:
- 2-65 (1) the geographic boundaries for a proposed pest
 2-66 management zone;
 2-67 (2) the amount of local interest in operating a
 2-68 suppression program;
 2-69 (3) the basis and amount of an assessment necessary to

3-1 support a suppression program;
 3-2 (4) ongoing implementation of a suppression program
 3-3 approved by growers in a pest management zone; and
 3-4 (5) any other matter requested by the commissioner or
 3-5 the corporation.
 3-6 (c) Each advisory committee appointed under this section
 3-7 must include a sufficient number of citrus producers to ensure
 3-8 adequate representation across the pest management zone and other
 3-9 persons as determined by the commissioner.
 3-10 (d) Advisory committees appointed under this section are
 3-11 immune from lawsuits and liability to the same extent the
 3-12 corporation is immune from lawsuits and liability under Section
 3-13 80.032.
 3-14 (e) An advisory committee established under this section is
 3-15 subject to Chapters 551 and 552, Government Code.
 3-16 Sec. 80.005. CREATION OF PEST MANAGEMENT ZONES. (a) The
 3-17 commissioner by rule may designate an area of this state as a
 3-18 proposed pest management zone.
 3-19 (b) The commissioner may hold a public hearing in the
 3-20 proposed pest management zone to discuss the proposed geographic
 3-21 boundaries of the zone. The public hearing may include any other
 3-22 topic allowed under this chapter.
 3-23 (c) After the adoption of a rule under Subsection (a), the
 3-24 commissioner shall conduct a referendum under Section 80.006.
 3-25 Sec. 80.006. PEST MANAGEMENT ZONE REFERENDA. (a) The
 3-26 commissioner shall conduct a referendum in each proposed pest
 3-27 management zone to determine whether citrus producers want to
 3-28 establish a pest management zone.
 3-29 (b) Pest management zone referenda shall be conducted under
 3-30 the procedures provided by Section 80.018.
 3-31 (c) A proposed pest management zone referendum ballot must
 3-32 include or be accompanied by information about the proposed pest
 3-33 management zone, including:
 3-34 (1) a statement of the purpose of the Asian citrus
 3-35 psyllid suppression program;
 3-36 (2) the geographic area included in the proposed pest
 3-37 management zone;
 3-38 (3) a general summary of rules adopted by the
 3-39 commissioner under Sections 80.018, 80.022, and 80.024, including a
 3-40 description of:
 3-41 (A) citrus producer responsibilities; and
 3-42 (B) penalties for noncompliance with rules
 3-43 adopted under this chapter; and
 3-44 (4) an address and toll-free telephone number that a
 3-45 citrus producer may use to request more information about the
 3-46 referendum or the Asian citrus psyllid suppression program.
 3-47 (d) If a referendum to establish a pest management zone is
 3-48 not approved, the concurrent election of a board member from the
 3-49 proposed pest management zone under Section 80.007 has no effect,
 3-50 and the commissioner shall appoint a representative to the board
 3-51 from the area.
 3-52 (e) The corporation may request the commissioner to call
 3-53 additional referenda in a proposed pest management zone in which a
 3-54 referendum has not been approved. An additional pest management
 3-55 zone referendum and concurrent board election may not be held
 3-56 before the first anniversary of the date of the preceding
 3-57 referendum.
 3-58 (f) After the approval of any referendum, the eligible
 3-59 voters shall be allowed, by subsequent referenda, to vote on
 3-60 whether to continue their assessments. The requirements for an
 3-61 initial referendum must be complied with in a subsequent
 3-62 referendum.
 3-63 Sec. 80.007. BOARD ELECTIONS. (a) The initial election
 3-64 for board members from a proposed pest management zone shall be held
 3-65 concurrently with a pest management zone referendum held under
 3-66 Section 80.006. Each pest management zone must be represented on
 3-67 the board and remain represented on the board until suppression
 3-68 operations are concluded and all debt of the pest management zone is
 3-69 paid.

4-1 (b) A board election shall be conducted under the procedures
 4-2 provided by this section and Section 80.018.

4-3 (c) A citrus producer who is eligible to vote in a
 4-4 referendum or election under this chapter is eligible to be a
 4-5 candidate for and member of the board if the person has at least
 4-6 seven years of experience as a citrus producer and otherwise meets
 4-7 the qualifications for the office.

4-8 (d) A citrus producer who wants to be a candidate for the
 4-9 board must meet the qualifications for board membership and file an
 4-10 application with the commissioner. The application must be:

4-11 (1) filed not later than the 30th day before the date
 4-12 set for the board election;

4-13 (2) on a form approved by the commissioner; and

4-14 (3) signed by at least 10 citrus producers who are
 4-15 eligible to vote in the board election.

4-16 (e) On receipt of an application and verification that the
 4-17 application meets the requirements of Subsection (d), an
 4-18 applicant's name shall be placed on the ballot for the board
 4-19 election.

4-20 (f) An eligible voter may vote for a citrus producer whose
 4-21 name does not appear on the official ballot by writing that person's
 4-22 name on the ballot.

4-23 (g) A board election must be preceded by at least 45 days'
 4-24 notice published in one or more newspapers published and
 4-25 distributed in the proposed or established pest management zone.
 4-26 The notice shall be published not less than once a week for three
 4-27 consecutive weeks. Not later than the 45th day before the date of
 4-28 the election, direct written notice of the election shall be given
 4-29 to each AgriLife Extension agent in the pest management zone.

4-30 (h) Each board member shall be sworn into office by a
 4-31 representative of the commissioner by taking the oath of office
 4-32 required for elected officers of the state.

4-33 Sec. 80.008. COMPOSITION OF BOARD. (a) The board is
 4-34 composed of members elected from each pest management zone
 4-35 established by referendum, members appointed by the commissioner
 4-36 from other citrus-growing areas of the state, and members appointed
 4-37 by the commissioner under Subsection (b). The commissioner shall
 4-38 appoint an initial board composed of 15 members. Except as provided
 4-39 by Subsection (b), the term of each board position may not exceed
 4-40 four years.

4-41 (b) In making appointments under this section, the
 4-42 commissioner shall appoint the following board members, selected
 4-43 from a variety of citrus-growing regions of the state, for
 4-44 four-year terms:

4-45 (1) an agricultural lender;

4-46 (2) an independent entomologist who is an integrated
 4-47 pest management specialist;

4-48 (3) two representatives from industries allied with
 4-49 citrus production; and

4-50 (4) a representative from the pest control industry.

4-51 (c) The commissioner may change the number of board
 4-52 positions or the pest management zone representation on the board
 4-53 to accommodate changes in the number of pest management zones. A
 4-54 change under this subsection may not contravene another provision
 4-55 of this chapter.

4-56 (d) A vacancy on the board shall be filled by appointment by
 4-57 the commissioner for the unexpired term.

4-58 (e) On 30 days' notice and opportunity for hearing, the
 4-59 commissioner may replace any unelected board member of the
 4-60 corporation.

4-61 Sec. 80.009. POWERS OF BOARD AND COMMISSIONER. (a) The
 4-62 board may:

4-63 (1) conduct programs consistent with the declaration
 4-64 of policy stated in Section 80.001;

4-65 (2) accept, as necessary to implement this chapter,
 4-66 gifts and grants;

4-67 (3) borrow money, with the approval of the
 4-68 commissioner, as necessary to execute this chapter;

4-69 (4) take other action and exercise other authority as

5-1 necessary to execute any act authorized by this chapter or the Texas
 5-2 Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's
 5-3 Texas Civil Statutes); and

5-4 (5) form an advisory committee composed of individuals
 5-5 from this state, other states, or other countries and change
 5-6 membership on the committee, as necessary. Any advisory committee
 5-7 created under this subdivision for the purpose of establishing
 5-8 treatment methods shall include among its members persons with
 5-9 knowledge of the effects of different treatments on the health of
 5-10 agricultural workers, the local population, and the ecosystem,
 5-11 including but not limited to the effects of a particular method of
 5-12 treatment on beneficial organisms and wildlife, the potential for
 5-13 secondary infestations from nontarget pests, and the potential for
 5-14 pest resistance to particular methods of treatment.

5-15 (b) On petition of at least 30 percent of the citrus
 5-16 producers eligible to vote in the proposed area, the commissioner
 5-17 may, or at the commissioner's discretion the commissioner by rule
 5-18 may, add an area to a pest management zone or transfer an area or
 5-19 county from one zone to another zone if:

5-20 (1) citrus production has begun or could begin in the
 5-21 area;

5-22 (2) the area is adjacent to a pest management zone or
 5-23 is in an area with biological characteristics similar to the pest
 5-24 management zone; and

5-25 (3) the addition is approved in a referendum held in
 5-26 the area.

5-27 (c) The board must adopt a procurement policy, subject to
 5-28 approval by the commissioner, outlining the procedures to be used
 5-29 in purchasing.

5-30 (d) The commissioner at any time may inspect the books and
 5-31 other financial records of the corporation.

5-32 Sec. 80.010. BOARD DUTIES. (a) The board shall have an
 5-33 annual independent audit of the books, records of account, and
 5-34 minutes of proceedings maintained by the corporation prepared by an
 5-35 independent certified public accountant or a firm of independent
 5-36 certified public accountants. The audit must include information
 5-37 for each zone in which a suppression program has been conducted
 5-38 under this chapter. The audit shall be filed with the board, the
 5-39 commissioner, and the state auditor and be made available to the
 5-40 public by the corporation or the commissioner. The transactions of
 5-41 the corporation are subject to audit by the state auditor in
 5-42 accordance with Chapter 321, Government Code.

5-43 (b) Not later than the 45th day after the last day of the
 5-44 fiscal year, the board shall submit to the commissioner a report
 5-45 itemizing all income and expenditures and describing all activities
 5-46 of the corporation during the fiscal year.

5-47 (c) The corporation shall provide fidelity bonds in amounts
 5-48 determined by the board for employees or agents who handle money for
 5-49 the corporation.

5-50 (d) The corporation and the board are state agencies for the
 5-51 following purposes only:

5-52 (1) exemption from taxation, including exemption from
 5-53 sales and use taxes and taxes under Chapter 152, Tax Code;

5-54 (2) exemption from vehicle registration fees; and

5-55 (3) indemnification under Chapter 104, Civil Practice
 5-56 and Remedies Code.

5-57 (e) Funds collected by the corporation are not state funds
 5-58 and are not required to be deposited in the state treasury. The
 5-59 corporation shall deposit all money collected under this chapter in
 5-60 a bank or other depository approved by the commissioner.

5-61 (f) The corporation is a governmental unit under Section
 5-62 101.001, Civil Practice and Remedies Code, and is entitled to
 5-63 governmental immunity. A tort claim against the corporation must
 5-64 be made under Chapter 101, Civil Practice and Remedies Code.

5-65 (g) The board shall collect data on the type and quantity of
 5-66 pesticides used in accordance with this chapter. The data shall be
 5-67 filed with the commissioner.

5-68 (h) All money collected under this chapter shall be used
 5-69 solely to finance programs approved by the commissioner as

6-1 consistent with this chapter.
6-2 (i) The corporation is subject to the requirements of:
6-3 (1) the open meetings law, Chapter 551, Government
6-4 Code; and
6-5 (2) the public information law, Chapter 552,
6-6 Government Code.
6-7 (j) A board member may not vote on any matter in which the
6-8 member has a direct pecuniary interest. A board member is subject
6-9 to the same restrictions as a local public official under Chapter
6-10 171, Local Government Code.
6-11 Sec. 80.011. ADMINISTRATIVE REVIEW. (a) The commissioner
6-12 by rule shall establish procedures for the informal review and
6-13 resolution of a claim arising out of certain acts taken by the
6-14 corporation under this chapter. Rules established under this
6-15 section shall include a designation of the acts that are subject to
6-16 review under this subsection and the appropriate remedial action,
6-17 as authorized by this chapter.
6-18 (b) A person dissatisfied with the department's informal
6-19 resolution of a claim under procedures adopted under Subsection (a)
6-20 may appeal the department's decision to the commissioner.
6-21 (c) A decision issued by the commissioner on a claim
6-22 appealed under Subsection (b) is the final administrative action of
6-23 the department and is subject to judicial review under Chapter
6-24 2001, Government Code.
6-25 (d) This section does not constitute a waiver of the state's
6-26 immunity from liability.
6-27 Sec. 80.012. LIABILITY OF CORPORATION MEMBERS, OFFICERS,
6-28 AND EMPLOYEES. (a) Except for instances of gross negligence,
6-29 individual criminal actions, or acts of dishonesty, the
6-30 corporation's members, directors, officers, and employees are not
6-31 individually liable to a citrus producer or other person for:
6-32 (1) errors in judgment;
6-33 (2) mistakes; or
6-34 (3) other acts or omissions.
6-35 (b) A corporation member, officer, or employee is not
6-36 individually liable for an act or omission of another corporation
6-37 member, officer, or employee.
6-38 Sec. 80.013. LIABILITY OF APPLICATORS. (a) In this
6-39 section, "applicator" means an individual or other person who is
6-40 not a member, director, officer, or employee of the corporation and
6-41 that contracts with the corporation to apply pesticides or other
6-42 chemicals using aircraft or other equipment to further or support
6-43 the control and suppression efforts undertaken under this chapter.
6-44 (b) An applicator is not jointly and severally liable for
6-45 any act or omission of the corporation under this chapter.
6-46 (c) The corporation shall have liability coverage in effect
6-47 for any control or suppression efforts for which it uses
6-48 applicators. The coverage must apply to acts and omissions of the
6-49 corporation and volunteers and be in the amount of at least \$500,000
6-50 for each single occurrence of death, bodily injury, or property
6-51 damage.
6-52 Sec. 80.014. CONTRACTING. (a) For a purchase of goods and
6-53 services under this chapter, the corporation may purchase goods and
6-54 services that provide the best value for the corporation.
6-55 (b) In determining the best value for the corporation, the
6-56 purchase price and whether the goods or services meet
6-57 specifications are the most important considerations. However, the
6-58 corporation may consider other relevant factors, including:
6-59 (1) the quality and reliability of the goods and
6-60 services;
6-61 (2) the delivery terms;
6-62 (3) indicators of probable vendor performance under
6-63 the contract, including:
6-64 (A) past vendor performance;
6-65 (B) the vendor's financial resources and ability
6-66 to perform;
6-67 (C) the vendor's experience or demonstrated
6-68 capability and responsibility; and
6-69 (D) the vendor's ability to provide reliable

7-1 maintenance agreements and support;

7-2 (4) the cost of any employee training associated with
7-3 a purchase; and

7-4 (5) other factors relevant to determining the best
7-5 value for the corporation in the context of a particular purchase.

7-6 Sec. 80.015. BOARD MEMBER COMPENSATION. Board members
7-7 serve without compensation but are entitled to reimbursement for
7-8 reasonable and necessary expenses incurred in the discharge of
7-9 their duties.

7-10 Sec. 80.016. DISCONTINUATION OF PROGRAM AND CORPORATION AND
7-11 DISPOSITION OF FUNDS ON DISCONTINUANCE. (a) On the determination
7-12 by the corporation that the Asian citrus psyllid suppression
7-13 program has been completed in all pest management zones established
7-14 under this chapter, the corporation shall provide notice of the
7-15 completion to the commissioner along with a request for
7-16 discontinuance of the control and suppression program and
7-17 collection of the assessment. Any request under this subsection
7-18 must include documentation supporting the fact that the Asian
7-19 citrus psyllid is no longer a threat to the state's citrus industry
7-20 and a plan for discontinuance of the program and assessment.

7-21 (b) The commissioner shall determine whether or not the
7-22 further suppression of the Asian citrus psyllid is necessary in the
7-23 pest management zones and approve or disapprove discontinuance of
7-24 the corporation and the plan for dissolution.

7-25 (c) On completion of the dissolution, the corporation shall
7-26 file a final report with the commissioner, including a financial
7-27 report, and submit all remaining funds into the trust of the
7-28 commissioner. Final books of the corporation shall be filed with
7-29 the commissioner and are subject to audit by the department.

7-30 (d) The commissioner shall pay from the corporation's
7-31 remaining funds all of the corporation's outstanding obligations.

7-32 (e) Funds remaining after payment under Subsection (d)
7-33 shall be returned to contributing citrus producers on a pro rata
7-34 basis.

7-35 (f) If 30 percent or more of the citrus producers eligible
7-36 to vote within a zone participating in the program present to the
7-37 commissioner a petition calling for a referendum of the qualified
7-38 voters on the proposition of discontinuing the program, the
7-39 commissioner shall conduct a referendum for that purpose.

7-40 (g) The commissioner shall give notice of the referendum,
7-41 the referendum shall be conducted, and the results shall be
7-42 declared in the manner provided by law for the original referendum
7-43 and election, with any necessary exceptions provided by rule of the
7-44 commissioner.

7-45 (h) The commissioner shall conduct the referendum before
7-46 the 90th day after the date the petition was filed, except that a
7-47 referendum may not be held before the second anniversary of any
7-48 other referendum in the pest management zone pertaining to
7-49 establishing or discontinuing the pest management zone.

7-50 (i) Approval of the proposition requires the same vote as
7-51 required in a referendum under Section 80.018(g). If the
7-52 proposition is approved, the suppression program is abolished and
7-53 the pest management zone ceases to exist on payment of all debts of
7-54 the pest management zone.

7-55 Sec. 80.017. ASSESSMENT REFERENDA. (a) The commissioner
7-56 shall propose the assessment needed in each pest management zone to
7-57 ensure the stability of the citrus industry by suppressing the
7-58 public nuisance caused by the Asian citrus psyllid.

7-59 (b) The commissioner shall propose in a referendum the:

7-60 (1) maximum assessment to be paid by citrus producers
7-61 having production in the pest management zone; and

7-62 (2) time for which the assessment will be made.

7-63 (c) With the commissioner's approval, the corporation may
7-64 make an assessment in a pest management zone at a level less than
7-65 the assessment approved by the referendum.

7-66 (d) The commissioner shall conduct an assessment referendum
7-67 under the procedures provided by Section 80.018.

7-68 (e) If an assessment referendum is approved, the
7-69 corporation may collect the assessment.

- 8-1 (f) An assessment levied on citrus producers in a pest
8-2 management zone may be applied only to:
8-3 (1) pest control in that zone;
8-4 (2) the corporation's operating costs, including
8-5 payments on debt incurred for a corporation activity, except that
8-6 the funds of one zone may not be used to pay another zone's bank
8-7 loans or debts; and
8-8 (3) the conducting of other programs consistent with
8-9 the declaration of policy stated in Section 80.001.
8-10 (g) The assessment shall be adequate and necessary to
8-11 achieve the goals of this chapter. The amount of the assessment
8-12 shall be determined by criteria established by the commissioner,
8-13 including:
8-14 (1) the extent of infestation;
8-15 (2) the amount of acreage planted;
8-16 (3) historical efforts to suppress;
8-17 (4) the growing season;
8-18 (5) epidemiology;
8-19 (6) historical weather conditions; and
8-20 (7) the costs and financing of the program.
8-21 (h) The commissioner shall give notice of and hold a public
8-22 hearing in the pest management zone regarding the proposed
8-23 assessment referendum. Before the referendum, the commissioner
8-24 shall review and approve:
8-25 (1) the amount of the assessment;
8-26 (2) the basis for the assessment;
8-27 (3) the time for payment of the assessment;
8-28 (4) the method of allocation of the assessment among
8-29 citrus producers;
8-30 (5) the restructuring and repayment schedule for any
8-31 preexisting debt; and
8-32 (6) the amount of debt to be incurred in the pest
8-33 management zone.
8-34 (i) The commissioner shall on a zone-by-zone basis set the
8-35 date on which assessments are due and payable.
8-36 (j) Each year, the commissioner shall review and approve the
8-37 corporation's operating budget.
8-38 (k) The corporation shall prepare and mail billing
8-39 statements to each citrus producer subject to the assessment that
8-40 state the amount due and the due date. The assessments shall be
8-41 sent to the corporation.
8-42 Sec. 80.018. CONDUCT OF BOARD ELECTIONS AND REFERENDA;
8-43 BALLOTING. (a) The commissioner shall conduct a referendum or
8-44 board election authorized under this chapter.
8-45 (b) The corporation shall bear all expenses incurred in
8-46 conducting a referendum or board election.
8-47 (c) The commissioner shall adopt rules for voting in board
8-48 elections and referenda to establish pest management zones. Rules
8-49 adopted under this subsection must include provisions for
8-50 determining:
8-51 (1) who is a citrus producer eligible to vote in an
8-52 election or referendum;
8-53 (2) whether a board member is elected by a plurality or
8-54 a majority of the votes cast; and
8-55 (3) the area from which each board member is elected.
8-56 (d) A citrus producer having citrus production in a proposed
8-57 or established pest management zone is entitled to:
8-58 (1) vote in a referendum concerning the pest
8-59 management zone; and
8-60 (2) elect board members to represent the pest
8-61 management zone.
8-62 (e) An eligible citrus producer may vote only once in a
8-63 referendum or board election.
8-64 (f) Ballots in a referendum or board election shall be
8-65 mailed directly to a central location, as determined by the
8-66 commissioner. A citrus producer eligible to vote in a referendum or
8-67 board election who has not received a ballot from the commissioner,
8-68 corporation, or another source shall be offered the option of
8-69 requesting a ballot by mail or obtaining a ballot at the office of

9-1 Texas AgriLife Extension or a government office distributing
 9-2 ballots in a county in the proposed or established zone in which the
 9-3 referendum or board election is conducted.

9-4 (g) A referendum is approved if:
 9-5 (1) at least two-thirds of those voting vote in favor
 9-6 of the referendum; or
 9-7 (2) those voting in favor of the referendum cultivate
 9-8 more than 50 percent, as determined by the commissioner, of the
 9-9 citrus acreage in the relevant pest management zone.

9-10 (h) If a referendum under this chapter is not approved, the
 9-11 commissioner may conduct another referendum. A referendum under
 9-12 this subsection may not be held before the first anniversary of the
 9-13 date on which the previous referendum on the same issue was held.

9-14 (i) A public hearing regarding the proposed suppression
 9-15 program, including information regarding regulations to be
 9-16 promulgated by the commissioner, may be held by the commissioner in
 9-17 each of several locations in each Asian citrus psyllid pest
 9-18 management zone.

9-19 (j) Individual voter information, including an individual's
 9-20 vote in a referendum or board election conducted under this
 9-21 section, is confidential and is not subject to disclosure under
 9-22 Chapter 552, Government Code.

9-23 Sec. 80.019. PAYMENT OF ASSESSMENTS; ASSESSMENT LIENS.

9-24 (a) A citrus producer who fails to pay an assessment levied under
 9-25 this chapter when due may be subject, after reasonable notice and
 9-26 opportunity for hearing, to a penalty set by the commissioner. In
 9-27 determining the amount of the penalty to be assessed, the
 9-28 commissioner shall consider:

- 9-29 (1) the seriousness of the violation, including the
- 9-30 nature, circumstances, and extent of the violation;
- 9-31 (2) the history of previous violations;
- 9-32 (3) the amount necessary to deter future violations;
- 9-33 (4) the economic situation of the citrus producer; and
- 9-34 (5) any other matter that justice may require.

9-35 (b) The corporation may develop a compliance certificate
 9-36 program to manage the payment and collection of an assessment
 9-37 levied under this chapter. Under the program the corporation,
 9-38 subject to department rules, may issue a compliance certificate for
 9-39 citrus for which an assessment has been paid.

9-40 (c) In addition to any other remedies for the collection of
 9-41 assessments and penalties, the commissioner may adopt rules
 9-42 relating to the compliance certificate program for suppression
 9-43 assessments. The rules may include:

- 9-44 (1) provisions establishing and relating to the
- 9-45 obligations of growers, packers, and buyers in due course of citrus
- 9-46 produced in active pest management zones to ensure that assessments
- 9-47 are paid within a prescribed time period;
- 9-48 (2) provisions allowing incentives in the form of
- 9-49 discounted assessments for growers who pay assessments within a
- 9-50 prescribed time period;
- 9-51 (3) provisions establishing penalties and interest
- 9-52 against growers who pay assessments after a prescribed time period;
- 9-53 and
- 9-54 (4) other provisions the commissioner determines are
- 9-55 proper.

9-56 (d) In addition to any other remedies for the collection of
 9-57 assessments and penalties, an assessment lien in favor of the
 9-58 corporation attaches and is perfected 60 days after the date the
 9-59 corporation mails notice of the assessment on citrus produced and
 9-60 harvested that year from the acreage that is subject to the
 9-61 assessment that is due and unpaid. An assessment lien is not an
 9-62 agricultural lien for the purposes of Chapter 9, Business &
 9-63 Commerce Code, and is not subject to the provisions of that chapter.
 9-64 An assessment lien is subject to and preempted by the Food Security
 9-65 Act of 1985 (7 U.S.C. Section 1631 et seq.) and shall be treated
 9-66 under that Act in the same manner as a security interest created by
 9-67 the seller. A buyer of citrus takes free of the assessment lien if
 9-68 the buyer:

- 9-69 (1) receives a compliance certificate issued by the

10-1 corporation when the buyer purchases the citrus that certifies that
 10-2 the assessment has been paid to the corporation;

10-3 (2) pays for the citrus by a check on which the
 10-4 department is named as a joint payee;

10-5 (3) does not receive notice of the assessment lien as
 10-6 required by the Food Security Act of 1985 (7 U.S.C. Section 1631 et
 10-7 seq.); or

10-8 (4) buys the citrus from a person other than the
 10-9 producer of the citrus.

10-10 (e) The corporation may assign, with the approval of the
 10-11 commissioner, assessments or liens in favor of the corporation as
 10-12 collateral for a loan to the corporation only if the proceeds of the
 10-13 loan are designated for use in the pest management zone from which
 10-14 the assessments or liens originated.

10-15 (f) If the department believes that a violation of this
 10-16 section or a rule adopted under this section has occurred, the
 10-17 department may investigate and, during normal business hours, audit
 10-18 and inspect the records of the person who is the subject of the
 10-19 investigation.

10-20 Sec. 80.020. EXEMPTION FROM ASSESSMENT PENALTIES. (a) The
 10-21 commissioner by rule shall adopt criteria to exempt from payment of
 10-22 an assessment penalty under Section 80.019 a citrus producer for
 10-23 whom payment would impose an undue financial burden.

10-24 (b) A citrus producer is not eligible for an exemption under
 10-25 this section for a year in which the amount computed by subtracting
 10-26 the assessments and penalties due under this chapter from the
 10-27 citrus producer's net income subject to federal income taxation in
 10-28 the previous year is greater than \$15,000.

10-29 (c) A citrus producer who applies for an exemption under
 10-30 this section must use a form prescribed by the commissioner. A
 10-31 citrus producer must file a separate application form for each year
 10-32 for which the citrus producer claims an exemption.

10-33 (d) The commissioner may establish a payment plan for a
 10-34 citrus producer applying for an exemption under this section.

10-35 (e) The commissioner shall promptly notify an applicant of
 10-36 the determination regarding the applicant's request for an
 10-37 exemption.

10-38 (f) If an exemption under this section is denied,
 10-39 assessments and penalties for the year for which the application is
 10-40 made are due on the later of:

10-41 (1) the date on which they would be due in the absence
 10-42 of an application for exemption; or

10-43 (2) 30 days after the date the applicant receives
 10-44 notice of the denial.

10-45 (g) In addition to the authority provided under Subsections
 10-46 (a)-(f), the commissioner may reduce or waive an assessment penalty
 10-47 as appropriate and necessary.

10-48 Sec. 80.021. ENTRY OF PREMISES; SUPPRESSION ACTIVITIES;
 10-49 INSPECTIONS. The department, the corporation, or a designated
 10-50 representative of either entity may enter citrus groves or other
 10-51 premises to carry out the purposes of this chapter, which include
 10-52 the treatment and monitoring of growing citrus or other host
 10-53 plants. The department, the corporation, or a designated
 10-54 representative of either entity may inspect groves or premises in
 10-55 this state for the purpose of determining whether the property is
 10-56 infested with the Asian citrus psyllid or citrus greening. An
 10-57 inspection must be conducted during reasonable daylight hours. The
 10-58 department shall give notice by publication of the planned schedule
 10-59 of dates for entry by the department, the corporation, or a
 10-60 designated representative of either entity, to the owner or
 10-61 occupant of the groves or premises to carry out the purposes of this
 10-62 chapter, including treatment, monitoring, or inspection functions.
 10-63 The department shall publish notice of the planned schedule to
 10-64 enter the groves or premises in a newspaper of general circulation
 10-65 in the pest management zone not less than once a week for two weeks
 10-66 immediately before the scheduled dates of entry. In addition to the
 10-67 notice published by the department, the corporation shall post
 10-68 notice of the planned schedule to enter groves or premises to carry
 10-69 out the purposes of this chapter at the county courthouse of each

11-1 county in the pest management zone not later than the 15th day
 11-2 before the planned dates of entry.

11-3 Sec. 80.022. AUTHORITY TO PROHIBIT PLANTING OF CITRUS AND
 11-4 REQUIRE PARTICIPATION IN SUPPRESSION PROGRAM. (a) The
 11-5 commissioner may adopt reasonable rules regarding areas where
 11-6 citrus may not be planted in a pest management zone if there is
 11-7 reason to believe planting will jeopardize the success of the
 11-8 program or present a hazard to public health or safety.

11-9 (b) The commissioner may adopt rules requiring all growers
 11-10 of citrus in a pest management zone to participate in an Asian
 11-11 citrus psyllid suppression program and growers of commercial citrus
 11-12 to participate in pest and disease management programs that include
 11-13 cost sharing as required by the rules.

11-14 (c) Notice of a prohibition or requirement shall be given by
 11-15 publication for one day each week for three successive weeks in a
 11-16 newspaper having general circulation in the affected area.

11-17 (d) The commissioner may adopt a reasonable schedule of
 11-18 penalty fees to be assessed against growers in a designated pest
 11-19 management zone who do not meet the requirements of the rules issued
 11-20 by the commissioner relating to reporting of acreage and
 11-21 participation in cost sharing. A penalty fee may not exceed \$50 per
 11-22 acre.

11-23 Sec. 80.023. AUTHORITY FOR DESTRUCTION OR TREATMENT OF
 11-24 CITRUS IN PEST MANAGEMENT ZONES; COMPENSATION PAYABLE. The
 11-25 department may destroy or treat, and establish procedures for the
 11-26 purchase and destruction of, citrus plants or hosts in pest
 11-27 management zones if the department determines the action is
 11-28 necessary to carry out the purposes of this chapter. The department
 11-29 is not liable to the owner or lessee for the destruction of or
 11-30 injury to any citrus that was planted in a pest management zone
 11-31 after the date notice is published as required by this chapter. The
 11-32 corporation is liable for the destruction of citrus if the citrus
 11-33 was planted in a pest management zone before the date that notice is
 11-34 published.

11-35 Sec. 80.024. AUTHORITY TO ADOPT RULES. (a) The
 11-36 commissioner shall adopt rules to protect individuals, livestock,
 11-37 wildlife, and honeybee colonies on any premises in a pest
 11-38 management zone on which citrus plants are being grown that have
 11-39 been or are being treated to control or suppress the Asian citrus
 11-40 psyllid and citrus greening.

11-41 (b) Rules adopted under this section shall establish the
 11-42 criteria by which the corporation develops its procedures and
 11-43 methods of treatment, which shall:

11-44 (1) establish a methodology for determining when Asian
 11-45 citrus psyllid population levels have reached economic
 11-46 significance or when citrus greening is present;

11-47 (2) establish an effective treatment regimen that
 11-48 seeks to provide the least possible risk to workers, the public, and
 11-49 the environment;

11-50 (3) minimize the effects of the use of pesticides on
 11-51 long-term control methods, including but not limited to the effect
 11-52 a particular pesticide may have on biological controls;

11-53 (4) establish methods for monitoring Asian citrus
 11-54 psyllids, citrus greening, and secondary pests;

11-55 (5) establish methods for verifying pesticide use
 11-56 reduction; and

11-57 (6) consider the acute and chronic toxicity of
 11-58 particular pesticides and the quantity of particular pesticides
 11-59 needed. Pest management zone treatment plans may take into account
 11-60 the potential for the use of smaller quantities of more toxic
 11-61 substances to result in fewer health and environmental risks than
 11-62 larger quantities of less toxic substances.

11-63 (c) The commissioner may adopt other reasonable rules
 11-64 necessary to carry out the purposes of this chapter. All rules
 11-65 issued under this chapter must be adopted and published in
 11-66 accordance with the laws of this state.

11-67 (d) An advisory committee may be established to assist the
 11-68 commissioner in the development of rules under this section. The
 11-69 advisory committee may be composed of:

12-1 (1) three citrus producers from the commercial citrus
 12-2 growing area of the state, appointed by the commissioner;

12-3 (2) three entomologists with knowledge of the
 12-4 principles of integrated pest management, at least one of whom has
 12-5 special knowledge of nonchemical or biological pest control,
 12-6 appointed by the commissioner;

12-7 (3) two individuals with experience representing the
 12-8 general interests of the environment, appointed by the chair of the
 12-9 Texas Commission on Environmental Quality;

12-10 (4) an environmental engineer with expert knowledge of
 12-11 ground and surface water protection from contamination, appointed
 12-12 by the chair of the Texas Commission on Environmental Quality;

12-13 (5) a toxicologist, appointed by the commissioner of
 12-14 state health services; and

12-15 (6) an individual with experience representing the
 12-16 general interests of consumers and an individual with experience
 12-17 representing the general interests of agricultural workers,
 12-18 appointed by the governor.

12-19 Sec. 80.025. REPORTS. Each person in an active pest
 12-20 management zone growing citrus in this state shall furnish to the
 12-21 corporation on forms supplied by the corporation information that
 12-22 the corporation requires concerning the size and location of all
 12-23 commercial citrus orchards and of noncommercial citrus grown for
 12-24 ornamental or other purposes. The corporation may provide an
 12-25 incentive for early and timely reporting.

12-26 Sec. 80.026. DOCUMENTING REGULATED ARTICLES. To implement
 12-27 this chapter, the department may issue or authorize issuance of:

12-28 (1) a certificate that indicates that a regulated
 12-29 article is not infested with the Asian citrus psyllid; and

12-30 (2) a permit that provides for the movement of a
 12-31 regulated article to a restricted destination for limited handling,
 12-32 use, or processing.

12-33 Sec. 80.027. COOPERATIVE PROGRAMS AUTHORIZED. (a) The
 12-34 corporation may carry out programs to destroy and manage the Asian
 12-35 citrus psyllid and citrus greening in this state by cooperating
 12-36 through written agreements, as approved by the commissioner, with:

12-37 (1) an agency of the federal government;

12-38 (2) a state agency;

12-39 (3) an appropriate agency of a foreign country
 12-40 contiguous to the affected area to the extent allowed by federal
 12-41 law;

12-42 (4) a person who is engaged in growing, processing,
 12-43 marketing, or handling citrus;

12-44 (5) a group of persons in this state involved in
 12-45 similar programs to carry out the purposes of this chapter; or

12-46 (6) an appropriate state agency of another state
 12-47 contiguous to the affected area, to the extent allowed by federal
 12-48 law, the law of the contiguous state, and the law of this state.

12-49 (b) An agreement entered into under this section may provide
 12-50 for cost sharing and for division of duties and responsibilities
 12-51 under this chapter and may include other provisions to carry out the
 12-52 purposes of this chapter.

12-53 Sec. 80.028. ORGANIC CITRUS PRODUCERS. (a) The
 12-54 commissioner shall develop rules and procedures to:

12-55 (1) protect the eligibility of organic citrus
 12-56 producers to be certified by the commissioner;

12-57 (2) ensure that organic and transitional
 12-58 certifications by the commissioner continue to meet national
 12-59 certification standards in order for organic citrus to maintain
 12-60 international marketability; and

12-61 (3) in all events maintain the effectiveness of the
 12-62 Asian citrus psyllid suppression program and citrus greening
 12-63 management administered under this chapter.

12-64 (b) The board may not treat or require treatment of organic
 12-65 citrus groves with chemicals that are not approved for use on
 12-66 certified organic citrus. Rules adopted under Subsection (a) may
 12-67 provide indemnity for the organic citrus producers for reasonable
 12-68 losses that result from a prohibition of production of organic
 12-69 citrus or from any requirement of destruction of organic citrus.

13-1 Sec. 80.029. PENALTIES. (a) A person who violates this
 13-2 chapter or a rule adopted under this chapter or who alters, forges,
 13-3 counterfeits, or uses without authority a certificate, permit, or
 13-4 other document issued under this chapter or under a rule adopted
 13-5 under this chapter commits an offense.

13-6 (b) An offense under this section is a Class C misdemeanor.

13-7 (c) If the commissioner determines that a violation of this
 13-8 chapter or a rule adopted under this chapter has occurred, the
 13-9 commissioner may request that the attorney general or the county or
 13-10 district attorney of the county in which the alleged violation
 13-11 occurred or is occurring file suit for civil, injunctive, or other
 13-12 appropriate relief.

13-13 Sec. 80.030. SUNSET PROVISION. (a) The board of directors
 13-14 of the official citrus producers' pest and disease management
 13-15 corporation is subject to Chapter 325, Government Code (Texas
 13-16 Sunset Act). Unless continued in existence as provided by that
 13-17 chapter, the board is abolished and this chapter expires September
 13-18 1, 2021.

13-19 (b) The commissioner may order the dissolution of the
 13-20 corporation at any time the commissioner determines that the
 13-21 purposes of this chapter have been fulfilled or that the
 13-22 corporation is inoperative and abandoned. Dissolution shall be
 13-23 conducted in accordance with Section 80.016.

13-24 (c) If the corporation is abolished or the suppression
 13-25 program discontinued for any reason, assessments approved, levied,
 13-26 or otherwise collectible on the date of abolishment remain valid as
 13-27 necessary to pay the financial obligations of the corporation.

13-28 Sec. 80.031. ANNUAL REPORT. The board shall issue to the
 13-29 commissioner and the appropriate oversight committee in the house
 13-30 of representatives an annual report detailing its efforts to carry
 13-31 out the purposes of this chapter.

13-32 Sec. 80.032. EXEMPTION FROM LAWSUITS, LIABILITY, TAXATION,
 13-33 AND LEGAL PROCESS. The legislature recognizes that the
 13-34 corporation, acting under the supervision and control of the
 13-35 commissioner, is carrying out an important governmental function
 13-36 and that therefore the corporation, as a quasi-governmental entity,
 13-37 must be immune from lawsuits and liability except to the extent
 13-38 provided in Chapter 101, Civil Practice and Remedies Code, and as
 13-39 provided by this section. Therefore, no claims may be brought or
 13-40 continued against the corporation except claims allowed by Chapter
 13-41 101, Civil Practice and Remedies Code. With the exception of
 13-42 finally adjudicated claims allowed by Chapter 101, Civil Practice
 13-43 and Remedies Code, all payments, contributions, funds, and
 13-44 assessments received or held by the foundation under this chapter
 13-45 are exempt from garnishment, attachment, execution, or other
 13-46 seizure and from state or local taxation, levies, sales, and any
 13-47 other process and are unassignable. Nothing in this section
 13-48 affects or impairs any existing or future indebtedness or any
 13-49 existing or future security interest created under a note, security
 13-50 agreement, assignment, or other loan agreement between the
 13-51 corporation and a lender or any judgment, to the extent the judgment
 13-52 allows recovery against the corporation pursuant to a note,
 13-53 security agreement, loan agreement, or other document.

13-54 Sec. 80.033. USE OF BIO-INTENSIVE CONTROLS. (a) The
 13-55 commissioner shall develop and adopt rules to allow a citrus
 13-56 producer in a suppression program to use biological, botanical, or
 13-57 other nonsynthetic pest control methods. In developing rules, the
 13-58 commissioner shall consider:

13-59 (1) scientific studies and field trials of the
 13-60 effectiveness of a proposed alternative control method;

13-61 (2) the feasibility of using a proposed alternative
 13-62 control technique within a particular region;

13-63 (3) the degree of monitoring necessary to establish
 13-64 the success of the use of a proposed alternative control; and

13-65 (4) methods to prevent the use of substances that
 13-66 would impede the use of alternative controls and the promotion of
 13-67 beneficial insect populations.

13-68 (b) A citrus producer that chooses to use an alternative
 13-69 method of control as provided in Subsection (a) shall notify the

14-1 board. The board and the citrus producer shall coordinate their
14-2 actions to prevent the use of substances that would impede the use
14-3 of alternative controls and the promotion of beneficial insect
14-4 populations.

14-5 (c) The citrus producer shall pay any additional cost of
14-6 bio-intensive control in addition to any assessment.

14-7 Sec. 80.034. VENUE. (a) Venue for an action arising out of
14-8 this chapter in which the corporation is a party is in Travis
14-9 County.

14-10 (b) This section does not expand the liability of the
14-11 corporation beyond the liability provided under Section 80.032.

14-12 SECTION 2. This Act takes effect September 1, 2009.

14-13 * * * * *