

1-1 By: Hegar S.B. No. 1871
1-2 (In the Senate - Filed March 11, 2009; March 24, 2009, read
1-3 first time and referred to Committee on Agriculture and Rural
1-4 Affairs; May 4, 2009, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 5, Nays 0; May 4, 2009,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1871 By: Hegar

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

1-10 relating to the management of volunteer and other noncommercial
1-11 cotton in pest management zones.

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

1-13 SECTION 1. Section 74.001, Agriculture Code, is amended to
1-14 read as follows:

1-15 Sec. 74.001. PUBLIC NUISANCE. (a) The legislature finds
1-16 that cotton pests are a menace to the cotton industry, and that
1-17 control of those pests is a public necessity. Any portion of the
1-18 state that is susceptible to infestation by cotton pests must be
1-19 protected from this public nuisance and threat to the continued
1-20 stability of the cotton industry.

1-21 (b) The legislature finds that volunteer and other
1-22 noncommercial cotton is a public nuisance that threatens the cotton
1-23 growers' boll weevil eradication program by serving as a host for
1-24 cotton pests such as boll weevils and pink bollworms. To protect
1-25 the cotton industry of this state, volunteer and other
1-26 noncommercial cotton must be eliminated subject to the provisions
1-27 of this chapter.

1-28 SECTION 2. Subchapter A, Chapter 74, Agriculture Code, is
1-29 amended by adding Sections 74.0031 and 74.0032 to read as follows:

1-30 Sec. 74.0031. COTTON STALK DESTRUCTION. (a) The
1-31 department shall submit the recommendations of each administrative
1-32 committee that governs a pest management zone under Section 74.003
1-33 to the Texas Boll Weevil Eradication Foundation. On review of the
1-34 administrative committee recommendations, the foundation shall
1-35 submit to the department an estimate of the amount by which the
1-36 implementation of each recommendation would increase the cost of
1-37 administering the boll weevil eradication program.

1-38 (b) The Texas Boll Weevil Eradication Foundation shall:

1-39 (1) conduct a study of the effects of incomplete
1-40 cotton stalk destruction and volunteer cotton control on boll
1-41 weevil eradication activities; and

1-42 (2) submit annual recommendations to the department
1-43 and the board of the foundation for a cotton stalk destruction
1-44 deadline for each pest management zone.

1-45 (c) The Texas Boll Weevil Eradication Foundation may
1-46 consult with its technical advisory committee in fulfilling its
1-47 duties under Subsection (b).

1-48 (d) The department shall set a cotton stalk destruction
1-49 deadline for each pest management zone, with consideration given to
1-50 the recommendations of the foundation and the applicable
1-51 administrative committee submitted under Subsection (b).

1-52 Sec. 74.0032. HOSTABLE COTTON FEE. (a) The department
1-53 shall establish a hostable cotton fee for fields in which hostable
1-54 cotton stalks, hostable volunteer cotton, or other hostable
1-55 noncommercial cotton remains past the stalk destruction deadline
1-56 set for the applicable pest management zone under Section 74.0031.
1-57 A fee under this section shall be expressed in terms of dollars per
1-58 acre, per week in which the stalks, volunteer cotton, or other
1-59 noncommercial cotton remains in the field. The department shall
1-60 establish a procedure to notify a cotton grower that a fee is due
1-61 the department under this section.

1-62 (b) If adverse weather conditions or other good cause
1-63 exists, the administrative committee that governs the applicable

2-1 pest management zone may request that the department grant an
 2-2 extension of the cotton stalk destruction deadline for any
 2-3 specified part of the pest management zone or for the entire pest
 2-4 management zone. A request under this subsection must be made not
 2-5 later than 10 business days before the applicable cotton stalk
 2-6 destruction deadline. A field is not subject to a hostable cotton
 2-7 fee if the department grants an extension of the deadline. The
 2-8 Texas Boll Weevil Eradication Foundation shall submit to the
 2-9 department an estimate of the amount by which an extension under
 2-10 this subsection will increase the cost of administering the boll
 2-11 weevil eradication program.

2-12 (c) If the applicable administrative committee does not
 2-13 request an extension, or if the department denies a request for an
 2-14 extension of the cotton stalk destruction deadline for a specified
 2-15 part of a pest management zone, a cotton grower may apply for an
 2-16 individual extension of the deadline. A request under this
 2-17 subsection must be made not later than 10 business days before the
 2-18 applicable pest management zone's stalk destruction deadline.

2-19 (d) The Texas Boll Weevil Eradication Foundation shall
 2-20 submit to the department an estimate of the amount by which any
 2-21 extension of a stalk destruction deadline that is granted under
 2-22 Subsection (c) will increase the cost of administering the boll
 2-23 weevil eradication program.

2-24 (e) Any hostable cotton or hostable cotton stalks that
 2-25 remain in a field after the cotton stalk destruction deadline or any
 2-26 extension of the stalk destruction deadline has passed are subject
 2-27 to the hostable cotton fee established under Subsection (a). Any
 2-28 hostable cotton or hostable cotton stalks that remain in a field for
 2-29 more than 30 days after the stalk destruction deadline or any
 2-30 extension of the deadline are subject to 150 percent of the hostable
 2-31 cotton fee established under Subsection (a).

2-32 (f) A hostable cotton fee shall be sent to the comptroller
 2-33 and may be appropriated only for the purpose of treating hostable
 2-34 cotton or for other expenses related to boll weevil eradication.
 2-35 The department may contract with the Texas Boll Weevil Eradication
 2-36 Foundation or its successor entity for the treatment, control, or
 2-37 monitoring activities funded from the account.

2-38 (g) Unless on or before the 45th day after the date the
 2-39 department gives notice to a cotton grower that a hostable cotton
 2-40 fee is due the fee is paid, the department may destroy any cotton or
 2-41 cotton stalks that remain in the field, as provided by Section
 2-42 74.004.

2-43 (h) The department shall adopt rules to administer this
 2-44 section.

2-45 SECTION 3. Subsections (a) and (b), Section 74.118,
 2-46 Agriculture Code, are amended to read as follows:

2-47 (a) The commissioner may adopt reasonable rules regarding
 2-48 areas where cotton may not be planted in an eradication zone if
 2-49 there is reason to believe planting will jeopardize the success of
 2-50 the program by making treatment impracticable or present a hazard
 2-51 to public health or safety.

2-52 (b) The commissioner may adopt rules relating to
 2-53 ~~[prohibiting the planting of]~~ noncommercial cotton located in
 2-54 eradication zones and requiring that all growers of commercial
 2-55 cotton in an eradication zone participate in a boll weevil or pink
 2-56 bollworm eradication program that includes cost sharing as required
 2-57 by the rules.

2-58 SECTION 4. Section 74.119, Agriculture Code, is amended to
 2-59 read as follows:

2-60 Sec. 74.119. AUTHORITY FOR DESTRUCTION OR TREATMENT OF
 2-61 COTTON IN ERADICATION ZONES; COMPENSATION PAYABLE. (a) The
 2-62 department shall ~~may~~ destroy or treat hostable volunteer or other
 2-63 hostable noncommercial cotton and establish procedures for the
 2-64 purchase and destruction of commercial cotton in eradication zones
 2-65 if the department determines the action is necessary to carry out
 2-66 the purposes of this subchapter. The department is not liable to
 2-67 the owner or lessee for the destruction of or injury to any cotton
 2-68 that was planted in an eradication zone after publication of notice
 2-69 as provided by this subchapter. The foundation is liable for the

3-1 destruction of cotton if the cotton was planted in an eradication
3-2 zone before publication of the notice.

3-3 (b) Not later than January 1, 2010, the department shall
3-4 adopt rules providing for the regulation and control of volunteer
3-5 and other noncommercial cotton in pest management zones. At a
3-6 minimum, the rules must:

3-7 (1) provide a grower or landowner with a period of time
3-8 in which the grower or owner is required to destroy hostable
3-9 volunteer or other hostable noncommercial cotton on receipt of a
3-10 notice from the department; and

3-11 (2) allow the department or a person designated by the
3-12 department:

3-13 (A) to monitor and treat hostable volunteer or
3-14 other hostable noncommercial cotton that is located in a crop field
3-15 for boll weevil infestation if the grower or landowner does not
3-16 destroy the cotton in compliance with the notice from the
3-17 department; and

3-18 (B) to destroy hostable volunteer or other
3-19 hostable noncommercial cotton that is not in a crop field, as
3-20 provided by Section 74.004.

3-21 (c) If a grower or landowner does not destroy hostable
3-22 volunteer or other hostable noncommercial cotton as required by
3-23 Subsection (b)(1), the grower or owner shall pay to the department a
3-24 volunteer cotton fee in an amount determined by the department. A
3-25 fee under this subsection:

3-26 (1) may be assessed only on acreage where hostable
3-27 volunteer or other hostable noncommercial cotton is located;

3-28 (2) may not be less than one-half the amount the grower
3-29 or owner would owe if the entire acreage were planted with cotton;
3-30 and

3-31 (3) shall be deposited to the credit of the hostable
3-32 cotton fee account established by Section 74.0032.

3-33 SECTION 5. This Act takes effect immediately if it receives
3-34 a vote of two-thirds of all the members elected to each house, as
3-35 provided by Section 39, Article III, Texas Constitution. If this
3-36 Act does not receive the vote necessary for immediate effect, this
3-37 Act takes effect September 1, 2009.

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