

BILL ANALYSIS

C.S.H.B. 1324
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Agriculture & Livestock
Committee Report (Substituted)

BACKGROUND AND PURPOSE

According to government sources, more than a dozen grain elevators in Texas failed or were forced to close in the last few years, resulting in the loss of hundreds of thousands of dollars to farmers. The state's grain warehouse inspection program, which is administered by the Department of Agriculture (TDA), provides for the enforcement of public warehouse laws relating to grain storage and provides certain protections for Texas grain producers through licensing, bonding, and insurance requirements. C.S.H.B. 1324 seeks to provide additional protections for Texas grain producers by increasing bonding requirements and securing additional enforcement authority for the TDA.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1324 amends the Agriculture Code to establish that financial information of a public grain warehouse operator provided to the Department of Agriculture (TDA) is confidential and not subject to public disclosure, with certain exceptions. The bill establishes that, in provisions of law relating to the regulation of public grain warehouse operators, "financial information" means a financial statement or other document provided by the warehouse operator to the TDA to evaluate the warehouse operator's net worth for purposes of the bond requirement for an applicant for a warehouse operator license; a financial audit provided by the warehouse operator to the department; and, if the warehouse operator is subject to an ongoing investigation by the department, the price of grain paid by the warehouse operator to a depositor or other seller of grain delivered to or stored or handled by the warehouse operator, the price of grain paid by or to the warehouse operator by a depositor or other purchaser of grain delivered to or stored or handled by the warehouse operator, and the terms of payment for those prices. The bill removes a provision establishing that inspection or investigation reports containing information regarding grain inventory and financial information provided to the TDA to establish net worth for purposes of licensing is confidential and not subject to public disclosure.

C.S.H.B. 1324 adds or modifies the following circumstances under which financial information of a warehouse operator provided to the TDA may be disclosed:

- without sealing in an administrative proceeding commenced by the TDA against the warehouse operator;
- to a local or state law enforcement officer, a county attorney, a district attorney, or the attorney general who, acting either independently or on behalf of the TDA, is investigating the warehouse operator;
- in response to a subpoena from a party in a civil proceeding commenced against the warehouse operator; or

- to the issuer of the warehouse operator's bond or letter of credit, removing the condition that such action is for the purpose of establishing a claim on the warehouse operator's bond or letter of credit.

C.S.H.B. 1324 removes provisions authorizing such financial information to be entered into evidence without sealing and made public in an administrative proceeding commenced by the TDA against a warehouse operator or in a civil or criminal proceeding commenced by a county attorney, a district attorney, or the attorney general either independently or on behalf of the TDA against a warehouse operator.

C.S.H.B. 1324 authorizes a party to a contract or other agreement with a warehouse operator to obtain a nonredacted copy of the contract or agreement and a person who authored or contributed to the creation of financial information to be provided access to the financial information for the purpose of confirming the authenticity, truthfulness, or accuracy of the information.

C.S.H.B. 1324 increases the minimum amount of the bond an applicant for a public grain warehouse operator's license is required to file or have on file with the TDA from not less than \$20,000 to not less than \$35,000. The bill creates a \$500,000 cap on the amount of the bond and specifies that the basis for that amount is 10 cents, rather than six cents, per bushel of storage capacity. The bill establishes that the basis for determining whether an applicant must file a deficiency bond is if the applicant's actual net worth equals less than the greater of either 25 cents per bushel of storage capacity or \$200,000, rather than less than 25 cents per bushel of storage capacity. The bill changes the required amount of the deficiency bond from an amount equal to the difference between the applicant's actual net worth and the amount determined by multiplying 25 cents times each bushel of storage capacity in the applicant's warehouse to an amount equal to the difference between the actual net worth and the greater of either \$200,000 or the amount that was determined based on each bushel of storage capacity.

C.S.H.B. 1324 expands the TDA actions or orders affecting a warehouse operator that are not appealable to include any action for which a specific administrative or judicial remedy is available under provisions of law relating to the regulation of public grain warehouse operators, the powers and duties of the TDA, or administrative procedures for state agencies.

C.S.H.B. 1324 includes the suspension of a warehouse operator's license in the actions the TDA may take upon determining that the operator has not met certain requirements relating to the possession of a sufficient amount of grain at the warehouse or the conduct of a lawful inspection of the warehouse. The bill expands the actions the TDA may require a warehouse operator to take, as stated in the department's notice to the operator after making such a determination and under other conditions, to include requiring the operator to submit records or property for lawful inspection or correct any condition interfering with the department's inspection of a warehouse or grain. The bill establishes that a suspension issued under these provisions remains in effect until lifted by the TDA through written notice to the warehouse operator or following an appeal under state law. The bill removes provisions of law authorizing the warehouse operator, under certain conditions, to serve notice on the TDA to appear in the district court of the county in which the public grain warehouse is located to show cause why possession should not be restored to the warehouse operator and requiring the court to fix the time of the hearing not less than 5 nor more than 15 days from the date of service of the notice.

C.S.H.B. 1324 authorizes the TDA, in addition to or in lieu of a license suspension authorized under the bill's provisions and without a hearing, to suspend a warehouse operator's license and prohibit the movement of grain into or out of the warehouse for up to 30 days if the department considers it necessary. The bill authorizes such a suspension, for good cause, to be extended for additional periods of up to 30 days each, not to exceed a total of 90 days of suspension in a licensing period, rather than authorizing a suspension for one or more periods not to cumulatively exceed 30 days in one licensing period. The bill establishes that a license

suspension under these provisions remains in effect until the suspension either is lifted by the TDA through written notice to the warehouse operator or following an appeal or until it expires by operation of law in accordance with the department's notice of suspension or the limitations provided by the bill's provisions. The bill makes conforming and nonsubstantive changes.

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 1324 differs from the original, in provisions providing for the meaning of "financial information," by specifying that such information includes, if the warehouse operator is subject to an ongoing investigation by the TDA, the price of grain paid by the warehouse operator to a depositor or other seller of grain delivered to or stored or handled by the warehouse operator, the price of grain paid by or to the warehouse operator by a depositor or other purchaser of such grain, and the terms for such payments, whereas the original specifies that financial information includes a statement of the price paid by or to a warehouse operator for grain delivered to, stored by, or handled by the warehouse operator or a statement of the terms of such a payment.

C.S.H.B. 1324 differs from the original by establishing that financial information of a warehouse operator provided to the TDA is confidential and not subject to public disclosure, whereas the original applies such confidentiality to financial information provided to the TDA by the warehouse operator.

C.S.H.B. 1324 differs from the original by providing that a petition for bankruptcy is only subject to public disclosure if it has been filed, whereas the original specifies that the petition has been filed by or against the warehouse operator.

C.S.H.B. 1324 differs from the original by authorizing a party to a contract or other agreement with a warehouse operator to obtain a nonredacted copy of the contract or agreement, whereas the original requires a warehouse operator to provide to a person at the person's request a copy of any agreement or contract between the person and the warehouse operator. The substitute differs from the original by authorizing a person who authored or contributed to the creation of financial information to be provided access to the information for certain purposes, whereas the original requires the warehouse operator to provide such financial information to the person. The substitute differs from the original by specifying that the copy of the contract or other agreement is nonredacted, whereas the original prohibits a warehouse operator from redacting a contract, agreement, or financial information provided to a person under the original's provisions.

C.S.H.B. 1324 differs from the original by removing a provision of law authorizing a warehouse operator, under certain conditions, to serve notice on TDA to appear in the district court of the county in which the public grain warehouse is located to show cause why possession should not be restored to the warehouse operator and requiring the court to fix the time of hearing within a specified period of time, whereas the original repeals that provision. The substitute makes a conforming change not included in the original.

C.S.H.B. 1324 contains a saving provision not included in the original and differs from the original in nonsubstantive ways.