

## **BILL ANALYSIS**

C.S.H.B. 1840  
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Agriculture & Livestock  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Grain producers sell to various grain buyers, including grain warehouses or elevators. Frequently, a producer stores the grain at a warehouse to be sold at a later date. Over the last few years, several grain warehouses have become financially insolvent. The producers were unable to recoup any of their grain, and the bonds held by the warehouses as required under current law paid only a fraction of the value of the crop. This loss was devastating to many producers in Texas. C.S.H.B. 1840 seeks to provide certain protections to grain producers by creating a board for the purpose of indemnifying grain producers for economic hardships in the event that a grain buyer is unable to pay a grain producer for grain.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Grain Producer Indemnity Board and to the commissioner of agriculture in SECTION 3 of this bill.

### **ANALYSIS**

C.S.H.B. 1840 amends the Agriculture Code to create the Texas Grain Producer Indemnity Board and establishes that the legislature intends for the board to indemnify grain producers for economic hardships in the event that a grain buyer is unable to pay a grain producer for the grain producer's grain. The bill requires the board to be the certified organization to indemnify grain producers and establishes that, to the extent that the bill's provisions conflict with other provisions of law, the bill's provisions prevail.

C.S.H.B. 1840 sets out provisions relating to the composition of the board, term limits for its members, the selection of the board's chair and vice chair, and the filling of board vacancies. The bill requires the board to meet at least once each year to review expenses of the board, claims made to the board by grain producers, and amounts paid on claims by the board; coordinate all matters relating to the board, including the board's budget under provisions of law relating to a commodity producers board's budget and the revenues necessary to accomplish the purposes of the board; establish, maintain, or adjust the rate of collected assessments; and determine the most effective use of the board's budget to provide protection to grain producers.

C.S.H.B. 1840 sets out provisions relating to the collection of assessments by a grain buyer and the remittance of the amounts collected during the preceding quarter to the secretary-treasurer of the board for deposit with the bank selected by the board. The bill authorizes the grain buyer to retain a portion of the assessment in an amount determined by the board to cover the grain buyer's administrative costs in collecting the assessment.

C.S.H.B. 1840 requires an assessment levied on grain producers to be applied by the board to efforts relating to the indemnification of grain producers in Texas, including administrative costs of conducting an assessment referendum. The bill establishes that assessments collected by the board are not state funds and are not required to be deposited in the state treasury and makes provisions of state law relating to the exemption of a commodity producer from certain

assessments and a refund of such an assessment inapplicable to a collected assessment.

C.S.H.B. 1840 authorizes a grain producer who has delivered grain to a grain buyer to initiate a claim with the board as provided by board rule if the grain buyer has suffered a financial failure and either has failed to pay to a grain producer an amount owed to the grain producer or is unable to deliver to the grain producer grain held by the grain buyer for the grain producer as a bailment and provides certain written documentation to the board. The bill requires such a claim to be initiated not more than 60 days after the applicable claim initiation date and to be for a loss of grain delivered to the grain buyer not more than one year before the applicable claim initiation date.

C.S.H.B. 1840 establishes requirements and procedures for the board's investigation and payment of a claim and establishes a maximum amount the board is authorized to award the grain producer for loss of grain. The bill requires the board, not later than the 30th day after the date the board makes a determination regarding the claim, to pay to the grain producer the amount determined by the board in accordance with the bill's provisions or notify the grain producer that the claim is denied. The bill requires the board, if claims filed with the board that are due to grain producers exceed the amount of the board's budget allocated for the payment of claims, to pay each grain producer on a prorated basis without regard to the order in which claims are made or approved and to pay the remainder of the amount owed to each grain producer on a prorated basis from future revenue as the revenue is collected.

C.S.H.B. 1840 authorizes the board to deny a grain producer's claim in whole or in part under certain circumstances and authorizes the board to adopt rules specifying those circumstances. The bill establishes that the board, if it pays a claim against a grain buyer, is subrogated to all rights of the grain producer against the grain buyer, to the extent of the amount paid to a grain producer by the board, and to any other entity from which the grain producer is entitled to a payment for the loss giving rise to the grain producer's claim under the bill's provisions. The bill requires funds recovered in this manner to be deposited with the depository bank selected by the board.

C.S.H.B. 1840 authorizes the board to adopt rules as necessary to implement the bill's provisions, including rules relating to notice and collection of assessments; the management of the board's budget; administration of the board's duties; the statewide referendum conducted under the bill's provisions; the selection of agents, designees, or devices to carry out the intent of the board; and guidelines for industry practices that do or do not qualify for indemnification by the board.

C.S.H.B. 1840 requires the commissioner of agriculture to conduct a referendum of grain producers to determine the maximum amount that may be assessed to a grain producer under the bill's provisions. The bill provides voting and balloting requirements for such a referendum and establishes that a referendum is approved if a simple majority of votes are cast in favor of the referendum. The bill specifies that individual voter information, including an individual's vote in the referendum, is confidential and not subject to disclosure under the open records law. The bill requires the board to locate private sources, including the certain commodities-related organizations described by the bill's provisions, to pay all expenses incurred in conducting a referendum and requires the commissioner to adopt rules as necessary to implement the referendum and balloting. The bill requires the commissioner to meet certain public notice requirements relating to the referendum.

C.S.H.B. 1840 authorizes a grain producer who has paid an assessment under the bill's provisions to obtain a refund of the amount paid by filing an application for refund with the board, with certain exceptions, and sets out requirements for the refund application. The bill prohibits a grain producer who receives such a refund from making a claim for indemnification for the grain for which the refund was received. The bill requires the board, if requests for refunds exceed the amount of the board's budget allocated for the payment of claims, to issue

refunds to each grain producer on a prorated basis without regard to the order in which requests for refunds are made and requires the board to pay the remainder of the amount owed to each grain producer on a prorated basis from future revenue as the revenue is collected.

C.S.H.B 1840 makes conforming changes.

C.S.H.B. 1840 defines "board," "claim initiation date," "financial failure," "grain," "grain buyer," and "grain producer."

C.S.H.B. 1840 requires the entities designated in provisions of the bill relating to the board's membership, as soon as practicable on or after the bill's effective date but not later than December 31, 2011, to recommend members to the board. The bill requires the commissioner to appoint the members to serve terms that begin January 1, 2012, and requires the appointed members to draw lots to determine their initial terms.

### **EFFECTIVE DATE**

September 1, 2011.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 1840 differs from the original by defining "board" as the Texas Grain Producer Indemnity Board, whereas the original defines "board" as the Grain Producer Indemnity Fund Board. The substitute differs from the original by including, in the definition of "claim initiation date," the earliest date on which a grain buyer is found to be insolvent by a court or a state or federal licensing agency, is ordered by a court having jurisdiction to pay a judgment to a grain producer, or loses its public warehouse license under certain federal or state laws, and omitting from the definition the earliest date on which a grain buyer fails to pay a grain producer on or before certain dates. The substitute omits a provision included in the original defining "fund" and makes conforming changes by changing references to the fund to references to the board as appropriate.

C.S.H.B. 1840 differs from the original by defining "grain" to mean corn, soybeans, wheat, and grain sorghum, whereas the original defines "grain" by reference to mean wheat, grain sorghum, corn, oats, barley, rye, soybeans, or any other grain, peas, or beans for which federal grain standards are established. The substitute differs from the original by including in the definition of "grain buyer" a purchaser, a warehouseman, a processor, or a commercial handler, whereas the original includes a grain merchant, a grain elevator, a livestock or poultry feeding operation, an ethanol plant, a biodiesel plant, or a seed company.

C.S.H.B. 1840 contains a provision not included in the original establishing the legislative intent for the Texas Grain Producer Indemnity Board and requiring the board to be the certified organization to indemnify grain producers. The substitute contains a provision not included in the original addressing a conflict between the bill's provisions and other provisions of law.

C.S.H.B. 1840 omits provisions included in the original creating the grain producer indemnity fund and setting out requirements relating to the fund.

C.S.H.B. 1840 contains the specification not included in the original that the board's composition of one representative of each of certain organizations includes any successor organizations of those organizations. The substitute differs from the original in its board composition, terms of service, and procedures for selecting chair and vice chair.

C.S.H.B. 1840 omits provisions included in the original prohibiting certain persons from serving on the board because of a conflict of interest, establishing procedures for removing a board member, and setting out requirements relating to standards of conduct for board members and

board member training.

C.S.H.B. 1840 omits the specification included in the original that the board's meetings are in conjunction with the Department of Agriculture (TDA). The substitute differs from the original by requiring the board to review expenses of the board, claims made to the board by grain producers, and amounts paid on claims by the board, whereas the original requires the board to review claims made against the fund and amounts paid on claims from the fund.

C.S.H.B. 1840 omits a provision included in the original requiring the board to consider rules for adoption by the TDA relating to the collection of assessments, the payment of claims from the fund, and the administration of the fund. The substitute omits a provision included in the original requiring the board to conduct adjudicative hearings on disputed claims presented for payment from the fund. The substitute contains a provision not included in the original requiring the board to determine the most effective use of the board's budget to provide protection to grain producers. The substitute omits provisions included in the original relating to the requirement that the board, in conjunction with the TDA, establish a range of minimum and maximum fund balances.

C.S.H.B. 1840 differs from the original by requiring a grain buyer to collect assessments in the manner prescribed for processors under provisions of law relating to the collection of assessments from commodity producers and exempting the collection of such assessments from state laws relating to a situation where the producer and the processor are the same legal entity, whereas the original requires a grain buyer, at the first point of sale of grain, to collect an assessment in a specified amount as determined by the board.

C.S.H.B. 1840 differs from the original by requiring a grain buyer, not later than the 10th day of each quarter of the calendar year, to remit the amount collected during the preceding quarter to the secretary-treasurer of the board for deposit with the bank selected by the board, whereas the original requires the remittance to be in the amount specified for deposit into the grain producer indemnity fund, together with any documents, records, and reports required by the TDA. The substitute contains a provision not included in the original authorizing the grain buyer to retain a portion of the assessment in an amount determined by the board to cover the grain buyer's administrative costs in collecting the assessment.

C.S.H.B. 1840 contains provisions not included in the original requiring an assessment levied on grain producers to be applied by the board to efforts relating to the indemnification of grain producers in Texas, establishing that such assessments are not state funds and are not required to be deposited in the state treasury, and making provisions of law relating to the exemption of a commodity producer from certain assessments and a refund of such an assessment inapplicable to a collected assessment under the substitute's provisions.

C.S.H.B. 1840 differs from the original, in provisions relating to the initiation of a claim, by authorizing a grain producer who has delivered grain to a grain buyer to initiate a claim with the board as provided by board rule under specified conditions, whereas the original authorizes the grain producer to initiate a claim against the fund as provided by department rule under specified conditions. The substitute omits the specification included in the original that the condition for the initiation of a claim that the grain buyer has suffered a financial failure and has failed to pay a grain producer an amount owed the producer occurred on or before any of certain specified dates. The substitute differs from the original in making it a condition for the initiation of a claim that the grain buyer is unable to deliver to the grain producer grain held by the grain buyer for the grain producer as a bailment, whereas the original makes the condition that the grain buyer refuses, fails, or is unable to deliver to the grain producer all or part of such grain.

C.S.H.B. 1840 differs from the original by making it a condition for the initiation of a claim that the grain producer provides the board with certain written documentation, including in such documentation a copy of the written contract for purchase of the grain signed by the grain

producer and the grain buyer and showing, among other items, any other relevant term required by the board to establish facts related to the claim, whereas the original makes the condition that the written documentation is provided to the TDA and that the copy of the written contract is signed only by the grain buyer and includes, among other items, any other term required by the TDA.

C.S.H.B. 1840 omits a provision included in the original prohibiting the TDA from imposing a maximum amount that a grain producer may claim under the provisions of the original. The substitute contains, as a ground for denying a claim that is not included in the original, that documentation submitted by the grain producer demonstrates that deferred payment on sold grain was beyond normal and customary practices. The substitute differs from the original by attributing to the board certain authority relating to a claim filed with the board, whereas the original attributes those authorities relating to claims against the fund to the TDA.

C.S.H.B. 1840 omits a provision included in the original requiring a grain buyer, if the TDA pays a claim against the grain buyer, to reimburse the fund immediately or agree in writing to reimburse the fund on a schedule determined by department rule and immediately pay the remaining amount due to the grain producer that was not paid by the fund in a manner determined by the TDA. The substitute omits a provision included in the original requiring a grain buyer who makes such a payment to pay interest at the rate of eight percent per year.

C.S.H.B. 1840 differs from the original by establishing that the board, if it pays a claim against a grain buyer, is subrogated to all rights of the grain producer against the grain buyer, to the extent of the amount paid to a grain producer by the board, and any other entity from which the grain producer is entitled to a payment for the loss giving rise to the grain producer's claim under the substitute's provisions, whereas the original establishes that the TDA is subrogated under such conditions. The substitute differs from the original by requiring funds recovered in this manner to be deposited with the depository bank selected by the board, whereas the original requires funds recovered in this manner to be deposited to the credit of the fund.

C.S.H.B. 1840 differs from the original by authorizing the board to adopt certain rules as necessary to implement the substitute's provisions, whereas the original authorizes the commissioner of agriculture to adopt certain rules as necessary to implement the original's provisions. The substitute differs from the original by adding a provision not contained in the original to include rules relating to the selection of agents, designees or devices to carry out the intent of the board and guidelines for industry practices that do or do not qualify for indemnification by the board.

C.S.H.B. 1840 omits provisions included in the original relating to the suspension or revocation of any license or permit issued by the TDA because of a violation of any provision of the original, the assessment of a civil penalty for such a violation, the entitlement of the TDA to injunctive relief to prevent or abate a violation of the original's provisions or a rule adopted under those provisions, and the distribution of fines collected in relation to such violations.

C.S.H.B. 1840 differs from the original by requiring the commissioner to conduct a referendum of grain producers to determine the maximum amount that may be assessed to a grain producer, whereas the original requires the commissioner to conduct a referendum of grain producers to determine whether grain producers desire to establish the grain producer indemnity fund and, if the creation of the fund is approved, the maximum amount that may be assessed to a grain producer. The substitute differs from the original by restricting the eligibility to vote in the referendum to a grain producer who has sold grain to a grain buyer in the 36 months preceding the date of the referendum, rather than 12 months preceding that date as in the original.

C.S.H.B. 1840 differs from the original by requiring the board to locate private sources, including the organizations described by the bill's provisions, to pay all expenses incurred in conducting a referendum and requiring the commissioner to adopt rules as necessary to

implement the referendum and balloting, whereas the original requires the board to pay all expenses incurred in conducting a referendum with funds collected from the grain industry and authorizes the commissioner, if the referendum is not approved, to conduct another referendum, subject to certain restrictions. The substitute contains a provision not included in the original requiring the commissioner to adopt rules as necessary to implement the substitute's provisions relating to the referendum.

C.S.H.B. 1840 differs from the original by requiring the commissioner to give public notice of the estimated amount of the assessment proposed to be collected, as determined by the board, and the basis for which the assessment will be collected, whereas the original requires the commissioner to give notice of the maximum amount and basis of the assessment proposed to be collected. The substitute omits the requirement included in the original that the publication of the notice, at least 60 days before the date of the referendum, be not less than once a week for three consecutive weeks.

C.S.H.B. 1840 contains provisions not included in the original relating to the refund of an assessment to a grain producer.

C.S.H.B. 1840 omits a conforming change and nonsubstantive changes included in the original in a schedule of penalty amounts assessed for violations of the Agriculture Code.

C.S.H.B. 1840 differs from the original by requiring the appointed board members to draw lots to determine which initial terms of four members expire January 1, 2013, and which initial terms of five members expire January 1, 2014, whereas the original requires the members to draw lots to determine which initial terms of three members expire January 1, 2013, and which initial terms of four members expire January 1, 2014.

C.S.H.B. 1840 omits a provision included in the original prohibiting the TDA from paying a claim against the fund until the fund balance reaches the minimum balance set by the board.

C.S.H.B. 1840 makes conforming changes not included in the original and differs from the original in nonsubstantive ways.