

BILL ANALYSIS

S.B. 248
By: Estes
Agriculture & Livestock
Committee Report (Unamended)

BACKGROUND AND PURPOSE

S.B. 248 provides enhanced protection for Texas grain producers by increasing bonding requirements for grain warehouses and securing additional enforcement authority for the Texas Department of Agriculture (TDA). According to TDA, 16 grain elevators—some full of corn, sorghum, wheat, and other grains—abruptly went bankrupt or failed in the past two years. Many farmers lost hundreds of thousands of dollars when the failed elevators closed their doors

The grain warehouse inspection program at TDA administers and enforces the Texas public warehouse laws relating to grain storage. The program requires any entity that stores grain for the public to be licensed and obtain bonding before operating. Each warehouse must be insured for loss of grain stocks for the full market value of the stock and must provide proof of insurance.

S.B. 248 amends current law relating to the regulation of public grain warehouse operators.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

ANALYSIS

SECTION 1. Amends Section 14.012, Agriculture Code, as follows:

Sec. 14.012. BUSINESS INFORMATION. (a) Provides that, except as provided by Subsection (b), financial information of a warehouse operator provided to the Texas Department of Agriculture (TDA) is confidential and not subject to public disclosure. Deletes existing text providing that certain information prepared by TDA in the course of its regulatory authority under this chapter or required to be submitted to TDA in accordance with TDA's administration of this chapter is confidential and not subject to public disclosure.

(b) Authorizes that, notwithstanding Subsection (a), financial information of a warehouse operator provided to TDA be disclosed without sealing in an administrative proceeding commenced by TDA against the warehouse operator; to a local or state law enforcement officer, a county attorney, a district attorney, or the attorney general, acting either independently or on behalf of TDA, investigating the warehouse operator; in a civil proceeding commenced by the warehouse operator against TDA; in response to a subpoena from a party in a civil proceeding commenced against the warehouse operator; to the issuer of the warehouse operator's bond or letter of credit; to the public after revocation of the warehouse operator's license, a voluntary closeout of all of the license holder's facilities in this state, a petition for bankruptcy has been filed, or a receiver for the warehouse operator's assets has been appointed; or to any federal agency or any agency of another state conducting a compliance inspection or criminal or civil investigation involving the handling, storing, shipping, selling, purchasing, or receipt of grain, rather than authorizes that, notwithstanding Subsection (a), inspection reports containing information regarding grain inventory of a warehouse operator or financial information of a warehouse operator provided to TDA to establish net worth, be entered into evidence without sealing and made public in an administrative proceeding commenced by TDA against a warehouse operator; a civil or criminal proceeding commenced by a county attorney, a district attorney, or the

attorney general, either independently or on behalf of TDA, against a warehouse operator; a civil proceeding commenced by the warehouse operator against TDA; provided to the issuer of a warehouse operator's bond or letter of credit for the purpose of establishing a claim on the warehouse operator's bond or letter of credit; disclosed to the public after revocation of a warehouse operator's license, a voluntary closeout of all of the license holder's facilities in this state, a petition for bankruptcy has been filed, or a receiver is appointed for the warehouse operator's assets; or disclosed to any federal agency or any agency of another state conducting a compliance inspection or criminal or civil investigation involving the handling, storing, shipping, selling, purchasing, or receipt of grain. Makes nonsubstantive changes.

(c) Provides that in this section, "financial information" means:

(1) a financial statement or other document provided by the warehouse operator to TDA to evaluate net worth requirements under Section 14.031(e) (relating to deficiency bonds);

(2) a financial audit provided by the warehouse operator to TDA;

(3) if the warehouse operator is subject to an ongoing investigation by TDA:

(A) 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;

(B) 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

(C) the terms of payment for a price described by Paragraph (A) or (B).

(d) Provides that, notwithstanding any other provision of this section, a party to a contract or other agreement with a warehouse operator may obtain a nonredacted copy of the contract or agreement; and a person who authored or contributed to the creation of financial information may be provided access to the financial information for the purpose of confirming the authenticity, truthfulness, or accuracy of the information.

SECTION 2. Amends Sections 14.031(d) and (e), Agriculture Code, as follows:

(d) Requires that the bond be in an amount of not less than \$35,000, rather than \$20,000, and be based on 10 cents, rather than six cents, per bushel of storage capacity, not to exceed a maximum of \$500,000.

(e) Requires the applicant to file a deficiency bond in an amount equal to the difference between the actual net worth and the greater of either \$200,000 or the amount determined by multiplying 25 cents times each bushel of storage capacity in the applicant's warehouse, if the actual net worth of an applicant equals less than the greater of either 25 cents per bushel of storage capacity or \$200,000. Provides that a deficiency bond is in addition to the bond required of an applicant by this section. Makes a nonsubstantive change.

SECTION 3. Amends Section 14.066(a), Agriculture Code, as follows:

(a) Provides that a TDA action or order affecting a warehouse operator under this chapter is appealable in accordance with this section unless the action involves agency rulemaking, the assessment of an administrative penalty, imposition of a license sanction, or any other action for which a specific administrative or judicial remedy is available under this chapter, Chapter 12 (Powers and Duties) of this code, or Chapter 2001 (Administrative Procedure), Government Code, rather than a TDA action or order affecting a warehouse operator under this chapter, other than by rulemaking, assessment of an administrative penalty, or

imposition of a license sanction, including a suspension under Section 14.083(c) is appealable in accordance with this section.

SECTION 4. Amends Sections 14.082(a) and (f), Agriculture Code, as follows:

(a) Authorizes TDA, if TDA determines that a warehouse operator does not possess sufficient grain to cover outstanding receipts and outstanding scale weight tickets issued or assumed by the warehouse operator, or if a warehouse operator refuses or is unable to submit records or property for lawful inspection or TDA is unable to conduct an inspection of the warehouse due to the condition of the warehouse or grain stored in the warehouse, to seal the warehouse to prevent deliver or receipt of grain except as authorized by TDA, suspend the license of the warehouse operator, and give notice to the warehouse operator requiring the warehouse operator to submit records or property for lawful inspection, to correct any condition interfering with TDA's inspection of the warehouse or grain, or to cover a shortage of a particular type of grain by taking certain actions.

(f) Provides that a license suspension issued under this section remains in effect until lifted by TDA through written notice to the warehouse operator or as provided by Section 14.066 (Appeal of Department Action by Warehouse Operator). Deletes existing text authorizing the warehouse operator, at any time before the 11th day following the day on which TDA takes possession of grain under this section, 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 to be restored to the warehouse operator. Deletes existing text requiring the court to fix the time of the hearing not less than five nor more than 15 days from the date of service of the notice.

SECTION 5. Amends Section 14.083, Agriculture Code, by amending Subsection (c) and adding Subsection (f), as follows:

(c) Authorizes TDA, if TDA considers it necessary, in addition to or in lieu of a license suspension authorized by another provision of this chapter, to suspend a license and prohibit the movement of grain into or out of a warehouse for up to 30 days without a hearing, rather than authorizes TDA, if the department considers it necessary, to suspend a license without a hearing for one or more periods not to cumulatively exceed 30 days in one licensing period. Provides that for good cause, a suspension under this subsection may be extended for additional periods of up to 30 days each, not to exceed a total 90 days of suspension in a licensing period.

(f) Provides that a license suspension under Subsection (c) remains in effect until lifted by TDA through written notice to the warehouse operator or as provided by Section 14.066 or until it expires by operation of law in accordance with TDA's notice of suspension or the limitations provided by Subsection (c).

SECTION 6. Amends Section 14.087(a), Agriculture Code, to provide that on prevailing in an action commenced by TDA through the attorney general under this chapter, rather than in an action commenced by TDA through the attorney general or a hearing commenced by the warehouse operator under Section 14.082(f), TDA and the attorney general are each entitled to recover investigation costs and fees, reasonable attorney's fees, court costs, and other costs relating to the action, including the cost of depositions and other forms of discovery and copying charges.

EFFECTIVE DATE

SECTION 7. Effective date: September 1, 2011.