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H.B. No. 1840

Substitute the following for H.B. No. 1840:

By: Landtroop

C.S.H.B. No. 1840

A BILL TO BE ENTITLED

AN ACT

relating to the creation and functions of the Texas Grain Producer  
Indemnity Board.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 41.001, Agriculture Code, is amended to  
read as follows:

Sec. 41.001. POLICY. It is in the interest of the public  
welfare of the State of Texas that the producers of any agricultural  
commodity be permitted and encouraged to develop, carry out, and  
participate in programs of research, disease and insect control,  
predator control, education, indemnification, and promotion  
designed to encourage the production, marketing, and use of the  
agricultural commodity. The purpose of this chapter is to  
authorize and prescribe the necessary procedures by which the  
producers of an agricultural commodity grown in this state may  
finance those programs. The programs may be devised to alleviate  
any circumstance or condition that serves to impede the production,  
marketing, or use of any agricultural commodity.

SECTION 2. Section 41.058(e), Agriculture Code, is amended  
to read as follows:

(e) The board may act separately or in cooperation with any  
person in developing, carrying out, and participating in programs  
of research, disease and insect control, predator control,  
education, indemnification, and promotion designed to encourage

1 the production, marketing, and use of the commodity on which the  
2 assessment is levied.

3 SECTION 3. Chapter 41, Agriculture Code, is amended by  
4 adding Subchapter I to read as follows:

5 SUBCHAPTER I. TEXAS GRAIN PRODUCER INDEMNITY BOARD

6 Sec. 41.201. DEFINITIONS. In this subchapter:

7 (1) "Board" means the Texas Grain Producer Indemnity  
8 Board.

9 (2) "Claim initiation date" means the earliest date on  
10 which a grain buyer:

11 (A) files for federal bankruptcy protection;

12 (B) becomes the subject of an involuntary  
13 bankruptcy proceeding;

14 (C) is found to be insolvent by a court or a state  
15 or federal licensing agency;

16 (D) is ordered by a court having jurisdiction to  
17 pay a judgment to a grain producer; or

18 (E) loses its public warehouse license under:

19 (i) the United States Warehouse Act (7  
20 U.S.C. Section 241 et seq.); or

21 (ii) Chapter 14.

22 (3) "Financial failure" means an event described by  
23 Subdivision (2)(A), (B), (C), (D), or (E).

24 (4) "Grain" means corn, soybeans, wheat, and grain  
25 sorghum.

26 (5) "Grain buyer" means a person who buys grain from a  
27 grain producer or stores unsold grain for a grain producer. The

1 term includes:

- 2 (A) a purchaser;
- 3 (B) a warehouseman;
- 4 (C) a processor; or
- 5 (D) a commercial handler.

6 (6) "Grain producer" means a person, including the  
7 owner of a farm on which grain is produced, or the owner's tenant or  
8 sharecropper, engaged in the business of producing grain or causing  
9 grain to be produced for commercial purposes.

10 Sec. 41.202. DECLARATION OF POLICY. (a) The legislature  
11 intends for the board to indemnify grain producers for economic  
12 hardships in the event that a grain buyer is unable to pay the grain  
13 producer for the grain producer's grain.

14 (b) The board shall be the certified organization to  
15 indemnify grain producers under this subchapter.

16 Sec. 41.203. CONFLICT WITH GENERAL COMMODITY LAW  
17 PROVISIONS. To the extent that this subchapter conflicts with  
18 other provisions of this chapter, this subchapter prevails.

19 Sec. 41.204. BOARD. (a) The board is composed of:

20 (1) one representative of each of the following  
21 organizations or their successor organizations who is recommended  
22 to the commissioner by the board of directors of the organization  
23 and appointed by the commissioner:

- 24 (A) the Corn Producers Association of Texas;
- 25 (B) the Texas Wheat Producers Association;
- 26 (C) the Texas Grain Sorghum Association;
- 27 (D) the Texas Soybean Association; and

1                   (E) the Texas Farm Bureau; and

2                   (2) the following members, appointed by the  
3 commissioner:

4                   (A) one representative of either the Texas  
5 Agricultural Cooperative Council, the Texas Grain & Feed  
6 Association, or one of their successor organizations;

7                   (B) one representative of the non-warehouse  
8 grain-buying industry;

9                   (C) one member with expertise in production  
10 agriculture financing; and

11                   (D) one attorney with expertise in bankruptcy and  
12 grain contracts.

13                   (b) Members of the board serve staggered terms of two years  
14 each and may serve for a maximum of three terms.

15                   (c) The directors described by Subsection (a)(1) shall  
16 select a chair and vice chair from among those directors.

17                   (d) A vacancy on the board, including a vacancy resulting  
18 from the failure of a board member to fulfill the board member's  
19 responsibilities, shall be filled in the manner provided by  
20 Subsection (a). If a vacancy on the board is the result of an  
21 organization described by Subsection (a) dissolving or failing to  
22 fulfill its responsibilities under this subchapter, the  
23 commissioner may fill the vacancy by appointing an individual from  
24 the sector or industry represented by the organization.

25                   Sec. 41.205. DUTIES OF BOARD. The board shall meet at least  
26 once each year to:

27                   (1) review expenses of the board, claims made to the

1 board by grain producers, and amounts paid on claims by the board;

2 (2) coordinate all matters relating to the board,  
3 including the board's budget under Section 41.059, and the revenues  
4 necessary to accomplish the purposes of the board;

5 (3) establish, maintain, or adjust the rate of  
6 assessments collected under Section 41.206; and

7 (4) determine the most effective use of the board's  
8 budget to provide protection to grain producers.

9 Sec. 41.206. COLLECTION OF ASSESSMENT. (a) Except as  
10 provided by this subsection, a grain buyer shall collect  
11 assessments in the manner prescribed for processors under Section  
12 41.081. Section 41.081(b) does not apply to the collection of  
13 assessments under this section.

14 (b) Except as provided by Subsection (c), not later than the  
15 10th day of each quarter of the calendar year, the grain buyer shall  
16 remit the amount collected during the preceding quarter to the  
17 secretary-treasurer of the board for deposit with the bank selected  
18 by the board under Section 41.060.

19 (c) The grain buyer may retain a portion of the assessment  
20 in an amount determined by the board to cover the grain buyer's  
21 administrative costs in collecting the assessment.

22 Sec. 41.207. ASSESSMENTS; APPLICABILITY OF OTHER LAW.

23 (a) An assessment levied on grain producers shall be applied by  
24 the board to efforts relating to the indemnification of grain  
25 producers in this state, including administrative costs of  
26 conducting an assessment referendum.

27 (b) Assessments collected by the board are not state funds

1 and are not required to be deposited in the state treasury.

2 (c) Sections 41.082 and 41.083 do not apply to an assessment  
3 collected under this subchapter.

4 Sec. 41.208. INITIATION OF CLAIM. (a) A grain producer who  
5 has delivered grain to a grain buyer may initiate a claim with the  
6 board as provided by board rule if:

7 (1) the grain buyer has suffered a financial failure  
8 and:

9 (A) has failed to pay to a grain producer an  
10 amount owed to the grain producer; or

11 (B) is unable to deliver to the grain producer  
12 grain held by the grain buyer for the grain producer as a bailment;  
13 and

14 (2) the grain producer provides to the board:

15 (A) written documentation showing that the grain  
16 was delivered to the grain buyer; and

17 (B) a copy of the written contract for purchase  
18 of the grain signed by the grain producer and the grain buyer and  
19 showing:

20 (i) the agreed price for the grain;

21 (ii) the amount of grain purchased; and

22 (iii) any other relevant term required by  
23 the board to establish facts related to the claim.

24 (b) A claim under this section must:

25 (1) be initiated not more than 60 days after the  
26 applicable claim initiation date; and

27 (2) be for a loss of grain delivered to the grain buyer

1 not more than one year before the applicable claim initiation date.

2 Sec. 41.209. PAYMENT OF CLAIM. (a) After a claim is  
3 initiated by a grain producer under Section 41.208, the board may  
4 take any action necessary to:

5 (1) investigate the grain producer's claim; and

6 (2) determine the amount due to the grain producer  
7 within the limit prescribed by Subsection (b) and subject to  
8 Subsection (e).

9 (b) In determining the amount due to a grain producer under  
10 Subsection (a) for a loss of grain, the board may award the grain  
11 producer not more than 90 percent of:

12 (1) the value of the grain on the claim initiation  
13 date, as determined by board rule, if the grain has not been sold;  
14 or

15 (2) the contract price of the grain, if the grain has  
16 been sold.

17 (c) Except as provided by Subsection (d), the board shall,  
18 not later than the 30th day after the date the board makes a  
19 determination under Subsection (a):

20 (1) pay to the grain producer the amount determined  
21 under Subsection (a); or

22 (2) notify the grain producer that the grain  
23 producer's claim is denied.

24 (d) If claims filed with the board that are due to grain  
25 producers under this section exceed the amount of the board's  
26 budget allocated for the payment of claims, the board shall pay each  
27 grain producer on a prorated basis without regard to the order in

1 which claims are made or approved. The board shall pay the  
2 remainder of the amount owed to each grain producer on a prorated  
3 basis from future revenue as the revenue is collected.

4 (e) The board may deny a grain producer's claim in whole or  
5 in part:

6 (1) if the grain producer has a history of failure to  
7 pay assessments under Section 41.206;

8 (2) if the applicable grain buyer has a history of  
9 failure to collect assessments as required by Section 41.206;

10 (3) if the documentation submitted by the grain  
11 producer in support of the grain producer's claim is incomplete,  
12 false, or fraudulent;

13 (4) to prevent the grain producer from recovering from  
14 multiple payments an amount greater than the amount the grain  
15 producer lost due to the financial failure of a grain buyer or to  
16 the grain buyer's refusal, failure, or inability to deliver to the  
17 grain producer grain held by the grain buyer as a bailment,  
18 including:

19 (A) payments made by the board;

20 (B) payments made from a grain warehouse  
21 operator's bond;

22 (C) payments ordered by a bankruptcy court; or

23 (D) a recovery under a state or federal crop  
24 insurance policy or program; or

25 (5) if documentation submitted by the grain producer  
26 demonstrates that deferred payment on sold grain was beyond normal  
27 and customary practices.



1       (f) The board may adopt rules specifying the circumstances  
2 under which a claim may be denied in whole or in part under  
3 Subsection (e).

4       Sec. 41.210. REIMBURSEMENT OF BOARD BY GRAIN BUYER;  
5 SUBROGATION OF RIGHTS. (a) If the board pays a claim against a  
6 grain buyer, the board is subrogated to all rights of the grain  
7 producer against:

8           (1) the grain buyer, to the extent of the amount paid  
9 to a grain producer by the board; and

10           (2) any other entity from which the grain producer is  
11 entitled to a payment for the loss giving rise to the grain  
12 producer's claim under this subchapter.

13       (b) Funds recovered under this section shall be deposited  
14 with the depository bank selected by the board under Section  
15 41.060.

16       Sec. 41.211. RULES. Except as provided by Section 41.212,  
17 the board may adopt rules as necessary to implement this  
18 subchapter, including rules relating to:

19           (1) notice and collection of assessments;

20           (2) the management of the board's budget;

21           (3) administration of the board's duties;

22           (4) the statewide referendum conducted under Section  
23 41.212;

24           (5) the selection of agents, designees, or devices to  
25 carry out the intent of the board; and

26           (6) guidelines for industry practices that do or do  
27 not qualify for indemnification by the board.

1       Sec. 41.212. REFERENDUM; BALLOTING. (a) The commissioner  
2 shall conduct a referendum of grain producers to determine the  
3 maximum amount that may be assessed to a grain producer under  
4 Section 41.206.

5       (b) Only a grain producer who has sold grain to a grain buyer  
6 in the 36 months preceding the date of the referendum is eligible to  
7 vote in the referendum.

8       (c) An eligible grain producer may vote only once in a  
9 referendum.

10       (d) Each grain producer's vote is entitled to equal weight  
11 regardless of the grain producer's volume of production.

12       (e) A referendum is approved if a simple majority of votes  
13 are cast in favor of the referendum.

14       (f) Individual voter information, including an individual's  
15 vote in a referendum conducted under this section, is confidential  
16 and not subject to disclosure under Chapter 552, Government Code.

17       (g) The board shall locate private sources, including the  
18 organizations described by Section 41.204(a)(1), to pay all  
19 expenses incurred in conducting a referendum.

20       (h) The commissioner shall adopt rules as necessary to  
21 implement this section.

22       Sec. 41.213. NOTICE OF REFERENDUM. (a) The commissioner  
23 shall give public notice of:

24               (1) the date, hours, and polling places for voting in  
25 the referendum conducted under Section 41.212;

26               (2) the estimated amount of the assessment proposed to  
27 be collected, as determined by the board, and the basis for which

1 the assessment will be collected; and

2 (3) a description of the manner in which the  
3 assessment is to be collected and the proceeds administered and  
4 used.

5 (b) The commissioner shall publish the notice under  
6 Subsection (a) in one or more statewide or regional newspapers that  
7 provide reasonable notice throughout the state. The notice shall  
8 be published at least 60 days before the date of the referendum. In  
9 addition, at least 60 days before the date of the referendum the  
10 commissioner shall give direct written notice to the county agent  
11 in each county of this state.

12 Sec. 41.214. REFUND OF ASSESSMENTS. (a) Except as provided  
13 by Subsection (d), a grain producer who has paid an assessment under  
14 Section 41.206 may obtain a refund of the amount paid by filing an  
15 application for refund with the board.

16 (b) The application must:

17 (1) be in writing, on a form prescribed by the board  
18 for that purpose; and

19 (2) be accompanied by:

20 (A) proof of payment of the assessment; and

21 (B) an affidavit stating that the grain producer  
22 does not wish to participate in or be covered by the indemnification  
23 established under this subchapter.

24 (c) A grain producer who receives a refund under this  
25 section may not make a claim for indemnification under Section  
26 41.208 for the grain for which the refund was received.

27 (d) If requests for refunds under this section exceed the

1 amount of the board's budget allocated for the payment of claims,  
2 the board shall issue refunds to each grain producer on a prorated  
3 basis without regard to the order in which requests for refunds are  
4 made. The board shall pay the remainder of the amount owed to each  
5 grain producer on a prorated basis from future revenue as the  
6 revenue is collected.

7       SECTION 4. (a) As soon as practicable on or after the  
8 effective date of this Act, but not later than December 31, 2011,  
9 the entities specified in Section 41.204, Agriculture Code, as  
10 added by this Act, shall recommend and the commissioner of  
11 agriculture shall appoint the members of the Texas Grain Producer  
12 Indemnity Board in compliance with that section to serve terms that  
13 begin January 1, 2012.

14       (b) The members of the board appointed under Subsection (a)  
15 of this section shall draw lots to determine which initial terms of  
16 four members expire January 1, 2013, and which initial terms of five  
17 members expire January 1, 2014.

18       SECTION 5. This Act takes effect September 1, 2011.