

1-1 By: Phillips, et al. (Senate Sponsor - Estes) H.B. No. 1840
1-2 (In the Senate - Received from the House May 6, 2011;
1-3 May 9, 2011, read first time and referred to Committee on
1-4 Agriculture and Rural Affairs; May 11, 2011, reported favorably by
1-5 the following vote: Yeas 4, Nays 0; May 11, 2011, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the creation and functions of the Texas Grain Producer
1-9 Indemnity Board.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Section 41.001, Agriculture Code, is amended to
1-12 read as follows:

1-13 Sec. 41.001. POLICY. It is in the interest of the public
1-14 welfare of the State of Texas that the producers of any agricultural
1-15 commodity be permitted and encouraged to develop, carry out, and
1-16 participate in programs of research, disease and insect control,
1-17 predator control, education, indemnification, and promotion
1-18 designed to encourage the production, marketing, and use of the
1-19 agricultural commodity. The purpose of this chapter is to
1-20 authorize and prescribe the necessary procedures by which the
1-21 producers of an agricultural commodity grown in this state may
1-22 finance those programs. The programs may be devised to alleviate
1-23 any circumstance or condition that serves to impede the production,
1-24 marketing, or use of any agricultural commodity.

1-25 SECTION 2. Section 41.058(e), Agriculture Code, is amended
1-26 to read as follows:

1-27 (e) The board may act separately or in cooperation with any
1-28 person in developing, carrying out, and participating in programs
1-29 of research, disease and insect control, predator control,
1-30 education, indemnification, and promotion designed to encourage
1-31 the production, marketing, and use of the commodity on which the
1-32 assessment is levied.

1-33 SECTION 3. Chapter 41, Agriculture Code, is amended by
1-34 adding Subchapter I to read as follows:

1-35 SUBCHAPTER I. TEXAS GRAIN PRODUCER INDEMNITY BOARD

1-36 Sec. 41.201. DEFINITIONS. In this subchapter:

1-37 (1) "Board" means the Texas Grain Producer Indemnity
1-38 Board.

1-39 (2) "Claim initiation date" means the earliest date on
1-40 which a grain buyer:

1-41 (A) files for federal bankruptcy protection;

1-42 (B) becomes the subject of an involuntary
1-43 bankruptcy proceeding;

1-44 (C) is found to be insolvent by a court or a state
1-45 or federal licensing agency;

1-46 (D) is ordered by a court having jurisdiction to
1-47 pay a judgment to a grain producer; or

1-48 (E) loses its public warehouse license under:

1-49 (i) the United States Warehouse Act (7
1-50 U.S.C. Section 241 et seq.); or

1-51 (ii) Chapter 14.

1-52 (3) "Financial failure" means an event described by
1-53 Subdivision (2)(A), (B), (C), (D), or (E).

1-54 (4) "Grain" means corn, soybeans, wheat, and grain
1-55 sorghum.

1-56 (5) "Grain buyer" means a person who buys grain from a
1-57 grain producer or stores unsold grain for a grain producer. The
1-58 term includes:

1-59 (A) a purchaser;

1-60 (B) a warehouseman;

1-61 (C) a processor; or

1-62 (D) a commercial handler.

1-63 (6) "Grain producer" means a person, including the
1-64 owner of a farm on which grain is produced, or the owner's tenant or

2-1 sharecropper, engaged in the business of producing grain or causing
 2-2 grain to be produced for commercial purposes.

2-3 Sec. 41.202. DECLARATION OF POLICY. (a) The legislature
 2-4 intends for the board to indemnify grain producers for economic
 2-5 hardships in the event that a grain buyer is unable to pay the grain
 2-6 producer for the grain producer's grain.

2-7 (b) The board shall be the certified organization to
 2-8 indemnify grain producers under this subchapter.

2-9 Sec. 41.203. CONFLICT WITH GENERAL COMMODITY LAW
 2-10 PROVISIONS. To the extent that this subchapter conflicts with
 2-11 other provisions of this chapter, this subchapter prevails.

2-12 Sec. 41.204. BOARD. (a) The board is composed of:

2-13 (1) one representative of each of the following
 2-14 organizations or their successor organizations who is recommended
 2-15 to the commissioner by the board of directors of the organization
 2-16 and appointed by the commissioner:

2-17 (A) the Corn Producers Association of Texas;

2-18 (B) the Texas Wheat Producers Association;

2-19 (C) the Texas Grain Sorghum Association;

2-20 (D) the Texas Soybean Association; and

2-21 (E) the Texas Farm Bureau; and

2-22 (2) the following members, appointed by the
 2-23 commissioner:

2-24 (A) one representative of either the Texas
 2-25 Agricultural Cooperative Council, the Texas Grain & Feed
 2-26 Association, or one of their successor organizations;

2-27 (B) one representative of the non-warehouse
 2-28 grain-buying industry;

2-29 (C) one member with expertise in production
 2-30 agriculture financing; and

2-31 (D) one attorney with expertise in bankruptcy and
 2-32 grain contracts.

2-33 (b) Members of the board serve staggered terms of two years
 2-34 each and may serve for a maximum of three terms.

2-35 (c) The directors described by Subsection (a)(1) shall
 2-36 select a chair and vice chair from among those directors.

2-37 (d) A vacancy on the board, including a vacancy resulting
 2-38 from the failure of a board member to fulfill the board member's
 2-39 responsibilities, shall be filled in the manner provided by
 2-40 Subsection (a). If a vacancy on the board is the result of an
 2-41 organization described by Subsection (a) dissolving or failing to
 2-42 fulfill its responsibilities under this subchapter, the
 2-43 commissioner may fill the vacancy by appointing an individual from
 2-44 the sector or industry represented by the organization.

2-45 Sec. 41.205. DUTIES OF BOARD. The board shall meet at least
 2-46 once each year to:

2-47 (1) review expenses of the board, claims made to the
 2-48 board by grain producers, and amounts paid on claims by the board;

2-49 (2) coordinate all matters relating to the board,
 2-50 including the board's budget under Section 41.059, and the revenues
 2-51 necessary to accomplish the purposes of the board;

2-52 (3) establish, maintain, or adjust the rate of
 2-53 assessments collected under Section 41.206; and

2-54 (4) determine the most effective use of the board's
 2-55 budget to provide protection to grain producers.

2-56 Sec. 41.206. COLLECTION OF ASSESSMENT. (a) Except as
 2-57 provided by this subsection, a grain buyer shall collect
 2-58 assessments in the manner prescribed for processors under Section
 2-59 41.081. Section 41.081(b) does not apply to the collection of
 2-60 assessments under this section.

2-61 (b) Except as provided by Subsection (c), not later than the
 2-62 10th day of each quarter of the calendar year, the grain buyer shall
 2-63 remit the amount collected during the preceding quarter to the
 2-64 secretary-treasurer of the board for deposit with the bank selected
 2-65 by the board under Section 41.060.

2-66 (c) The grain buyer may retain a portion of the assessment
 2-67 in an amount determined by the board to cover the grain buyer's
 2-68 administrative costs in collecting the assessment.

2-69 Sec. 41.207. ASSESSMENTS; APPLICABILITY OF OTHER LAW.

- 3-1 (a) An assessment levied on grain producers shall be applied by
3-2 the board to efforts relating to the indemnification of grain
3-3 producers in this state, including administrative costs of
3-4 conducting an assessment referendum.
- 3-5 (b) Assessments collected by the board are not state funds
3-6 and are not required to be deposited in the state treasury.
- 3-7 (c) Sections 41.082 and 41.083 do not apply to an assessment
3-8 collected under this subchapter.
- 3-9 Sec. 41.208. INITIATION OF CLAIM. (a) A grain producer who
3-10 has delivered grain to a grain buyer may initiate a claim with the
3-11 board as provided by board rule if:
- 3-12 (1) the grain buyer has suffered a financial failure
3-13 and:
- 3-14 (A) has failed to pay to a grain producer an
3-15 amount owed to the grain producer; or
- 3-16 (B) is unable to deliver to the grain producer
3-17 grain held by the grain buyer for the grain producer as a bailment;
3-18 and
- 3-19 (2) the grain producer provides to the board:
- 3-20 (A) written documentation showing that the grain
3-21 was delivered to the grain buyer; and
- 3-22 (B) a copy of the written contract for purchase
3-23 of the grain signed by the grain producer and the grain buyer and
3-24 showing:
- 3-25 (i) the agreed price for the grain;
3-26 (ii) the amount of grain purchased; and
3-27 (iii) any other relevant term required by
3-28 the board to establish facts related to the claim.
- 3-29 (b) A claim under this section must:
- 3-30 (1) be initiated not more than 60 days after the
3-31 applicable claim initiation date; and
- 3-32 (2) be for a loss of grain delivered to the grain buyer
3-33 not more than one year before the applicable claim initiation date.
- 3-34 Sec. 41.209. PAYMENT OF CLAIM. (a) After a claim is
3-35 initiated by a grain producer under Section 41.208, the board may
3-36 take any action necessary to:
- 3-37 (1) investigate the grain producer's claim; and
3-38 (2) determine the amount due to the grain producer
3-39 within the limit prescribed by Subsection (b) and subject to
3-40 Subsection (e).
- 3-41 (b) In determining the amount due to a grain producer under
3-42 Subsection (a) for a loss of grain, the board may award the grain
3-43 producer not more than 90 percent of:
- 3-44 (1) the value of the grain on the claim initiation
3-45 date, as determined by board rule, if the grain has not been sold;
3-46 or
- 3-47 (2) the contract price of the grain, if the grain has
3-48 been sold.
- 3-49 (c) Except as provided by Subsection (d), the board shall,
3-50 not later than the 30th day after the date the board makes a
3-51 determination under Subsection (a):
- 3-52 (1) pay to the grain producer the amount determined
3-53 under Subsection (a); or
- 3-54 (2) notify the grain producer that the grain
3-55 producer's claim is denied.
- 3-56 (d) If claims filed with the board that are due to grain
3-57 producers under this section exceed the amount of the board's
3-58 budget allocated for the payment of claims, the board shall pay each
3-59 grain producer on a prorated basis without regard to the order in
3-60 which claims are made or approved. The board shall pay the
3-61 remainder of the amount owed to each grain producer on a prorated
3-62 basis from future revenue as the revenue is collected.
- 3-63 (e) The board may deny a grain producer's claim in whole or
3-64 in part:
- 3-65 (1) if the grain producer has a history of failure to
3-66 pay assessments under Section 41.206;
- 3-67 (2) if the applicable grain buyer has a history of
3-68 failure to collect assessments as required by Section 41.206;
- 3-69 (3) if the documentation submitted by the grain

4-1 producer in support of the grain producer's claim is incomplete,
4-2 false, or fraudulent;
4-3 (4) to prevent the grain producer from recovering from
4-4 multiple payments an amount greater than the amount the grain
4-5 producer lost due to the financial failure of a grain buyer or to
4-6 the grain buyer's refusal, failure, or inability to deliver to the
4-7 grain producer grain held by the grain buyer as a bailment,
4-8 including:
4-9 (A) payments made by the board;
4-10 (B) payments made from a grain warehouse
4-11 operator's bond;
4-12 (C) payments ordered by a bankruptcy court; or
4-13 (D) a recovery under a state or federal crop
4-14 insurance policy or program; or
4-15 (5) if documentation submitted by the grain producer
4-16 demonstrates that deferred payment on sold grain was beyond normal
4-17 and customary practices.
4-18 (f) The board may adopt rules specifying the circumstances
4-19 under which a claim may be denied in whole or in part under
4-20 Subsection (e).
4-21 Sec. 41.210. REIMBURSEMENT OF BOARD BY GRAIN BUYER;
4-22 SUBROGATION OF RIGHTS. (a) If the board pays a claim against a
4-23 grain buyer, the board is subrogated to all rights of the grain
4-24 producer against:
4-25 (1) the grain buyer, to the extent of the amount paid
4-26 to a grain producer by the board; and
4-27 (2) any other entity from which the grain producer is
4-28 entitled to a payment for the loss giving rise to the grain
4-29 producer's claim under this subchapter.
4-30 (b) Funds recovered under this section shall be deposited
4-31 with the depository bank selected by the board under Section
4-32 41.060.
4-33 Sec. 41.211. RULES. Except as provided by Section 41.212,
4-34 the board may adopt rules as necessary to implement this
4-35 subchapter, including rules relating to:
4-36 (1) notice and collection of assessments;
4-37 (2) the management of the board's budget;
4-38 (3) administration of the board's duties;
4-39 (4) the statewide referendum conducted under Section
4-40 41.212;
4-41 (5) the selection of agents, designees, or devices to
4-42 carry out the intent of the board; and
4-43 (6) guidelines for industry practices that do or do
4-44 not qualify for indemnification by the board.
4-45 Sec. 41.212. REFERENDUM; BALLOTING. (a) The commissioner
4-46 shall conduct a referendum of grain producers to determine the
4-47 maximum amount that may be assessed to a grain producer under
4-48 Section 41.206.
4-49 (b) Only a grain producer who has sold grain to a grain buyer
4-50 in the 36 months preceding the date of the referendum is eligible to
4-51 vote in the referendum.
4-52 (c) An eligible grain producer may vote only once in a
4-53 referendum.
4-54 (d) Each grain producer's vote is entitled to equal weight
4-55 regardless of the grain producer's volume of production.
4-56 (e) A referendum is approved if a simple majority of votes
4-57 are cast in favor of the referendum.
4-58 (f) Individual voter information, including an individual's
4-59 vote in a referendum conducted under this section, is confidential
4-60 and not subject to disclosure under Chapter 552, Government Code.
4-61 (g) The board shall locate private sources, including the
4-62 organizations described by Section 41.204(a)(1), to pay all
4-63 expenses incurred in conducting a referendum.
4-64 (h) The commissioner shall adopt rules as necessary to
4-65 implement this section.
4-66 Sec. 41.213. NOTICE OF REFERENDUM. (a) The commissioner
4-67 shall give public notice of:
4-68 (1) the date, hours, and polling places for voting in
4-69 the referendum conducted under Section 41.212;

5-1 (2) the estimated amount of the assessment proposed to
5-2 be collected, as determined by the board, and the basis for which
5-3 the assessment will be collected; and

5-4 (3) a description of the manner in which the
5-5 assessment is to be collected and the proceeds administered and
5-6 used.

5-7 (b) The commissioner shall publish the notice under
5-8 Subsection (a) in one or more statewide or regional newspapers that
5-9 provide reasonable notice throughout the state. The notice shall
5-10 be published at least 60 days before the date of the referendum. In
5-11 addition, at least 60 days before the date of the referendum the
5-12 commissioner shall give direct written notice to the county agent
5-13 in each county of this state.

5-14 Sec. 41.214. REFUND OF ASSESSMENTS. (a) Except as provided
5-15 by Subsection (d), a grain producer who has paid an assessment under
5-16 Section 41.206 may obtain a refund of the amount paid by filing an
5-17 application for refund with the board.

5-18 (b) The application must:

5-19 (1) be in writing, on a form prescribed by the board
5-20 for that purpose; and

5-21 (2) be accompanied by:

5-22 (A) proof of payment of the assessment; and

5-23 (B) an affidavit stating that the grain producer
5-24 does not wish to participate in or be covered by the indemnification
5-25 established under this subchapter.

5-26 (c) A grain producer who receives a refund under this
5-27 section may not make a claim for indemnification under Section
5-28 41.208 for the grain for which the refund was received.

5-29 (d) If requests for refunds under this section exceed the
5-30 amount of the board's budget allocated for the payment of claims,
5-31 the board shall issue refunds to each grain producer on a prorated
5-32 basis without regard to the order in which requests for refunds are
5-33 made. The board shall pay the remainder of the amount owed to each
5-34 grain producer on a prorated basis from future revenue as the
5-35 revenue is collected.

5-36 Sec. 41.215. ANNUAL REPORT. (a) The board shall submit a
5-37 report to the commissioner annually that contains a summary of the
5-38 board's activities and a review of the board's effectiveness.

5-39 (b) The board shall post the report online on the board's
5-40 Internet website.

5-41 SECTION 4. (a) As soon as practicable on or after the
5-42 effective date of this Act, but not later than December 31, 2011,
5-43 the entities specified in Section 41.204, Agriculture Code, as
5-44 added by this Act, shall recommend and the commissioner of
5-45 agriculture shall appoint the members of the Texas Grain Producer
5-46 Indemnity Board in compliance with that section to serve terms that
5-47 begin January 1, 2012.

5-48 (b) The members of the board appointed under Subsection (a)
5-49 of this section shall draw lots to determine which initial terms of
5-50 four members expire January 1, 2013, and which initial terms of five
5-51 members expire January 1, 2014.

5-52 SECTION 5. This Act takes effect September 1, 2011.

5-53 * * * * *