

By: Estes

S.B. No. 1232

A BILL TO BE ENTITLED

AN ACT

relating to the creation of the grain producer indemnity fund.

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

SECTION 1. Title 2, Agriculture Code, is amended by adding Chapter 14B to read as follows:

CHAPTER 14B. GRAIN PRODUCER INDEMNITY FUND

Sec. 14B.001. DEFINITIONS. In this chapter:

(1) "Board" means the Grain Producer Indemnity Fund Board.

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

(A) files for federal bankruptcy protection;

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

(C) fails to pay to a grain producer an amount owed to the grain producer on or before:

(i) the date specified in a contract for the purchase of grain; or

(ii) if the contract does not specify a payment due date:

(a) the 10th day after the date of purchase, if the purchase occurs after the grain is delivered; or

(b) the 10th day after the date of delivery, if the purchase occurs before the grain is delivered.

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

3 (4) "Fund" means the grain producer indemnity fund.

4 (5) "Grain" has the meaning assigned by Section
5 14.001.

6 (6) "Grain buyer" means a person who buys grain from a
7 grain producer or stores unsold grain for a grain producer. The
8 term includes:

9 (A) a grain merchant;

10 (B) a grain elevator;

11 (C) a livestock or poultry feeding operation;

12 (D) an ethanol plant;

13 (E) a biodiesel plant; or

14 (F) a seed company.

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

19 Sec. 14B.002. FUND. (a) The grain producer indemnity fund
20 is a special trust fund with the comptroller administered by the
21 department, without appropriation, for the payment of claims
22 against a grain buyer who has experienced a financial failure.

23 (b) The department shall deposit assessments remitted under
24 Section 14B.009 in the fund.

25 (c) Interest or other income from investment of the fund
26 shall be deposited to the credit of the fund.

27 (d) The board shall set a minimum balance for the fund to be

1 held in reserve to pay for administrative costs in the event that
2 claims against the fund exceed the total balance of the fund.

3 (e) The department in conjunction with the board shall set
4 an annual administration fee to be paid to the department out of the
5 fund to compensate the department for the cost of administering the
6 fund and implementing the department's authority under this
7 chapter, including costs associated with investigation and
8 enforcement.

9 Sec. 14B.003. BOARD. (a) The board is composed of one
10 representative of each of the following organizations who is
11 recommended to the commissioner by the board of directors of the
12 organization and appointed by the commissioner:

- 13 (1) the Corn Producers Association of Texas;
- 14 (2) the Texas Wheat Producers Association;
- 15 (3) the Texas Grain Sorghum Association;
- 16 (4) the Texas Soybean Association;
- 17 (5) the Texas Farm Bureau;
- 18 (6) the Texas Agricultural Cooperative Council; and
- 19 (7) the Texas Grain & Feed Association.

20 (b) Members of the board may serve for a maximum of three
21 terms of two years each.

22 (c) The directors described by Subsections (a)(1)-(5) shall
23 select a chair and vice chair from among those directors. The chair
24 and vice chair serve as chair or vice chair for a term of one year
25 and may not serve as chair or vice chair for consecutive terms.

26 (d) A vacancy on the board, including a vacancy resulting
27 from the failure of a board member to fulfill the board member's

1 responsibilities, shall be filled in the manner provided by
2 Subsection (a). If a vacancy on the board is the result of an
3 organization described by Subsection (a) dissolving or failing to
4 fulfill its responsibilities under this chapter, the commissioner
5 may fill the vacancy by appointing an individual from the sector or
6 industry represented by the organization.

7 Sec. 14B.004. BOARD CONFLICT OF INTEREST. (a) An officer,
8 employee, or paid consultant of a Texas trade association in the
9 field of agriculture may not be a member of the board.

10 (b) A person who is the spouse of an officer, manager, or
11 paid consultant of a Texas trade association in the field of
12 agriculture may not be a member of the board.

13 (c) For the purposes of this section, a Texas trade
14 association is a nonprofit, cooperative, and voluntarily joined
15 association of business or professional competitors in this state
16 designed to assist its members and its industry or profession in
17 dealing with mutual business or professional problems and in
18 promoting their common interest.

19 (d) A person may not serve as a member of the board if the
20 person is required to register as a lobbyist under Chapter 305,
21 Government Code, because of the person's activities for
22 compensation on behalf of a profession related to the operation of
23 the board.

24 Sec. 14B.005. REMOVAL OF BOARD MEMBER. (a) It is a ground
25 for removal from the board if a member:

26 (1) violates a prohibition established by Section
27 14B.004;

1 (2) cannot because of illness or disability discharge
2 the member's duties for a substantial part of the term for which the
3 member is appointed; or

4 (3) is absent from more than half of the regularly
5 scheduled board meetings that the member is eligible to attend
6 during a calendar year unless the absence is excused by majority
7 vote of the board.

8 (b) The validity of an action of the board is not affected by
9 the fact that it is taken when a ground for removal of a board member
10 exists.

11 Sec. 14B.006. STANDARDS OF CONDUCT. The commissioner or
12 the commissioner's designee shall provide to members of the board,
13 as often as necessary, information regarding their qualification
14 for office under this chapter and their responsibilities under
15 applicable laws relating to standards of conduct for state
16 officers.

17 Sec. 14B.007. BOARD MEMBER TRAINING. (a) Before a member
18 of the board may assume the member's duties, the member must
19 complete at least one course of the training program established
20 under this section.

21 (b) A training program established under this section shall
22 provide information to the member regarding:

23 (1) the enabling legislation that created the board;

24 (2) the programs operated by the board;

25 (3) the role and functions of the board;

26 (4) the rules of the board;

27 (5) the current budget for funds the board

1 administers;

2 (6) the results of the most recent formal audit of the
3 board;

4 (7) the requirements of:

5 (A) Chapter 551, Government Code;

6 (B) Chapter 552, Government Code; and

7 (C) Chapter 2001, Government Code;

8 (8) the requirements of the conflict of interest laws
9 and other laws relating to public officials; and

10 (9) any applicable ethics policies adopted by the
11 department or the Texas Ethics Commission.

12 Sec. 14B.008. DUTIES OF BOARD. (a) The board, in
13 conjunction with the department, shall meet at least once each year
14 to:

15 (1) review claims made against the fund and amounts
16 paid on claims from the fund;

17 (2) coordinate all matters relating to the fund,
18 including the fund's budget and the revenues necessary to
19 accomplish the purposes of the fund;

20 (3) consider rules for adoption by the department
21 relating to the collection of assessments, the payment of claims
22 from the fund, and the administration of the fund;

23 (4) establish, maintain, or adjust the assessment
24 rate; and

25 (5) conduct adjudicative hearings on disputed claims
26 presented for payment from the fund.

27 (b) The board, in conjunction with the department, shall

1 establish a range of minimum and maximum fund balances that shall be
2 maintained at all times. The range of minimum and maximum fund
3 balances may be changed by a majority vote of the board. The board
4 may suspend or reenact the collection of assessments under Section
5 14B.009 in order to maintain a fund balance within the applicable
6 range of minimum and maximum established under this subsection.

7 Sec. 14B.009. COLLECTION OF ASSESSMENT. (a) At the first
8 point of sale of grain, a grain buyer shall collect an assessment in
9 an amount determined by the board that is a percentage of the
10 purchase price of the grain by deducting the appropriate amount
11 from the purchase price of the grain or from any funds advanced for
12 that purpose.

13 (b) Not later than the 10th day of each quarter of the
14 calendar year, the grain buyer shall remit the amount collected
15 under Subsection (a) during the preceding quarter to the department
16 for deposit into the fund, together with any documents, records,
17 and reports required by the department.

18 Sec. 14B.010. INITIATION OF CLAIM. (a) A grain producer
19 who has delivered grain to a grain buyer may initiate a claim
20 against the fund as provided by department rule if:

21 (1) the grain buyer:

22 (A) has suffered a financial failure and has
23 failed to pay to a grain producer an amount owed to the grain
24 producer on or before:

25 (i) the date specified in a contract for the
26 purchase of grain; or

27 (ii) if the contract does not specify a

1 payment due date:

2 (a) the 10th day after the date of
3 purchase, if the purchase occurs after the grain is delivered; or

4 (b) the 10th day after the date of
5 delivery, if the purchase occurs before the grain is delivered; or

6 (B) refuses, fails, or is unable to deliver to
7 the grain producer all or part of the grain held by the grain buyer
8 as a bailment; and

9 (2) the grain producer provides to the department:

10 (A) written documentation showing that the grain
11 was delivered to the grain buyer; and

12 (B) a copy of the written contract for purchase
13 of the grain signed by the grain buyer and showing:

14 (i) the agreed price for the grain;

15 (ii) the amount of grain purchased; and

16 (iii) any other term required by the
17 department.

18 (b) A claim under this section must:

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

21 (2) be for a loss of grain delivered to the grain buyer
22 not more than one year before the applicable claim initiation date.

23 Sec. 14B.011. PAYMENT OF CLAIM. (a) After a claim is
24 initiated by a grain producer under Section 14B.010, the department
25 may take any action necessary to:

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

27 (2) determine the amount due to the grain producer

1 within the limit prescribed by Subsection (b) and subject to
2 Subsection (f).

3 (b) In determining the amount due to a grain producer under
4 Subsection (a) for a loss of grain, the department may award the
5 grain producer not more than 90 percent of:

6 (1) the value of the grain on the claim initiation
7 date, as determined by department rule, if the grain has not been
8 sold; or

9 (2) the contract price of the grain, if the grain has
10 been sold.

11 (c) The department may not impose a maximum amount that a
12 grain producer may claim under this chapter.

13 (d) Except as provided by Subsection (e), the department
14 shall, not later than the 30th day after the date the department
15 makes a determination under Subsection (a):

16 (1) pay to the grain producer the amount determined
17 under Subsection (a); or

18 (2) notify the grain producer that the grain
19 producer's claim is denied.

20 (e) If claims against the fund that are due to grain
21 producers under this section exceed the balance of the fund, the
22 department shall pay each grain producer on a prorated basis
23 without regard to the order in which claims are made or approved.
24 The department shall pay the remainder of the amount owed to each
25 grain producer on a prorated basis from future fund revenue as the
26 revenue is collected.

27 (f) The department may deny a grain producer's claim in

1 whole or in part:

2 (1) if the grain producer has a history of failure to
3 pay assessments under Section 14B.009;

4 (2) if the applicable grain buyer has a history of
5 failure to remit assessments to the department as required by
6 Section 14B.009;

7 (3) if the documentation submitted by the grain
8 producer in support of the grain producer's claim is incomplete,
9 false, or fraudulent; or

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

16 (A) payments made from the fund;

17 (B) payments made from a grain warehouse
18 operator's bond;

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

20 (D) a recovery under a state or federal crop
21 insurance policy or program.

22 (g) The department may adopt rules specifying the
23 circumstances under which a claim may be denied in whole or in part
24 under Subsection (f).

25 Sec. 14B.012. REIMBURSEMENT OF FUND BY GRAIN BUYER;
26 SUBROGATION OF RIGHTS. (a) If the department pays a claim against
27 a grain buyer, the grain buyer shall:

1 (1) reimburse the fund immediately or agree in writing
2 to reimburse the fund on a schedule determined by department rule;
3 and

4 (2) immediately pay the remaining amount due to the
5 grain producer that was not paid by the fund in a manner determined
6 by the department.

7 (b) In addition to the amount required to be paid under
8 Subsection (a), a grain buyer who makes a payment to a grain
9 producer or to the fund under this section shall pay interest at the
10 rate of eight percent per year.

11 (c) If the department pays a claim against a grain buyer,
12 the department is subrogated to all rights of the grain producer
13 against:

14 (1) the grain buyer, to the extent of the amount paid
15 to a grain producer from the fund; and

16 (2) any other entity from which the grain producer is
17 entitled to a payment for the loss giving rise to the grain
18 producer's claim under this chapter.

19 (d) Funds recovered under this section shall be deposited to
20 the credit of the fund.

21 Sec. 14B.013. RULES. The commissioner may adopt rules as
22 necessary to implement this chapter, including rules relating to:

23 (1) notice and collection of assessments;

24 (2) payment of claims from the fund;

25 (3) administration of the fund; and

26 (4) the statewide referendum conducted under Section
27 14B.017.

1 Sec. 14B.014. SUSPENSION OR REVOCATION OF LICENSE. In
2 addition to other remedies provided by law, a violation of any
3 provision of this chapter or a rule adopted under this chapter is
4 grounds for suspension or revocation of any license or permit
5 issued by the department.

6 Sec. 14B.015. CIVIL PENALTY; INJUNCTION. (a) A person who
7 violates this chapter or a rule adopted under this chapter is liable
8 to the state for a civil penalty not to exceed \$10,000 for each
9 violation. Each day a violation continues may be considered a
10 separate violation for purposes of a civil penalty assessment.

11 (b) On request of the department, the attorney general or
12 the county attorney or district attorney of the county in which the
13 violation is alleged to have occurred shall file suit to collect the
14 penalty.

15 (c) A civil penalty collected under this section shall be
16 deposited into the fund. All civil penalties recovered in suits
17 first instituted by a local government or governments under this
18 section shall be equally divided between the fund and the local
19 government or governments with 50 percent of the recovery to be paid
20 to the fund and the other 50 percent equally to the local government
21 or governments first instituting the suit.

22 (d) The department is entitled to appropriate injunctive
23 relief to prevent or abate a violation of this chapter or a rule
24 adopted under this chapter. On request of the department, the
25 attorney general or the county or district attorney of the county in
26 which the alleged violation is threatened or is occurring shall
27 file suit for the injunctive relief. Venue is in any county in which

1 the alleged violation is threatened or is occurring.

2 Sec. 14B.016. DISTRIBUTION OF FINES. Notwithstanding a
3 provision to the contrary in the Code of Criminal Procedure, a fine
4 collected in relation to a violation of Chapter 31, Penal Code, in
5 connection with the collection or remittance of an assessment due
6 under this chapter shall be divided between the fund and the county
7 in which the prosecution occurs, with 50 percent of the recovery to
8 be paid to the fund and 50 percent to the county.

9 Sec. 14B.017. REFERENDUM; BALLOTING. (a) The commissioner
10 shall conduct a referendum of grain producers to determine:

11 (1) whether grain producers desire to establish the
12 fund; and

13 (2) if the creation of the fund is approved, the
14 maximum amount that may be assessed to a grain producer under
15 Section 14B.009.

16 (b) Only a grain producer who has sold grain to a grain buyer
17 in the 12 months preceding the date of the referendum is eligible to
18 vote in the referendum.

19 (c) An eligible grain producer may vote only once in a
20 referendum.

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

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

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

1 (g) The board shall pay all expenses incurred in conducting
2 a referendum with funds collected from the grain industry.

3 (h) If a referendum under this section is not approved, the
4 commissioner may conduct another referendum. A referendum under
5 this subsection may not be held before the first anniversary of the
6 date on which the previous referendum on the same issue was held.

7 Sec. 14B.018. NOTICE OF REFERENDUM. (a) The commissioner
8 shall give public notice of:

9 (1) the date, hours, and polling places for voting in
10 the referendum conducted under Section 14B.017;

11 (2) the maximum amount and basis of the assessment
12 proposed to be collected; and

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

16 (b) The commissioner shall publish the notice under
17 Subsection (a) in one or more statewide or regional newspapers that
18 provide reasonable notice throughout the state. The notice shall
19 be published not less than once a week for three consecutive weeks,
20 beginning at least 60 days before the date of the referendum. In
21 addition, at least 60 days before the date of the referendum the
22 commissioner shall give direct written notice to the county agent
23 in each county of this state.

24 SECTION 2. Section 12.020(c), Agriculture Code, is amended
25 to read as follows:

26 (c) The provisions of law subject to this section and the
27 applicable penalty amounts are as follows:

Provision	Amount of Penalty
1	
2 [Chapter 41	not more than \$5,000]
3 Chapters 13, 14A, 18, <u>19, 41,</u> 46,	
4 <u>61, 72, 73, 74, 76, 94, 95,</u> 101,	
5 <u>102, 103, 121, 125, 132,</u>	
6 and 134	not more than \$5,000
7 [Subchapter B, Chapter 71	
8 [Chapter 19	
9 [Chapter 76	not more than \$5,000]
10 Subchapters A, B, and C, Chapter 71	
11 [Chapters 72, 73, and 74]	not more than \$5,000
12 <u>Chapters [Chapter] 14 and 14B</u>	not more than \$10,000
13 Chapter 1951, Occupations Code	not more than \$5,000
14 Chapter 153, Natural Resources	
15 Code	not more than \$5,000.

16 SECTION 3. (a) As soon as practicable on or after the
 17 effective date of this Act, but not later than December 31, 2011,
 18 the entities specified in Section 14B.003, Agriculture Code, as
 19 added by this Act, shall recommend and the commissioner of
 20 agriculture shall appoint the members of the Grain Producer
 21 Indemnity Fund Board in compliance with that section to serve terms
 22 that begin January 1, 2012.

23 (b) The members of the board appointed under Subsection (a)
 24 of this section shall draw lots to determine which initial terms of
 25 three members expire January 1, 2013, and which initial terms of
 26 four members expire January 1, 2014.

27 (c) The Department of Agriculture may not pay a claim
 28 against the fund under Section 14B.011, Agriculture Code, as added
 29 by this Act, until the fund balance reaches the minimum balance set
 30 by the board under Section 14B.008, Agriculture Code, as added by
 31 this Act.

32 SECTION 4. This Act takes effect September 1, 2011.