

House Bill 1840
Senate Amendments
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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 the production, marketing, and use of the commodity on which the assessment is levied.

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

SUBCHAPTER I. TEXAS GRAIN PRODUCER INDEMNITY BOARD

Sec. 41.201. DEFINITIONS. In this subchapter:

(1) "Board" means the Texas Grain Producer Indemnity

SENATE VERSION (IE)

SECTION 1. Same as House version.

SECTION 2. Same as House version.

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

SUBCHAPTER I. TEXAS GRAIN PRODUCER INDEMNITY BOARD

Sec. 41.201. DEFINITIONS. In this subchapter:

(1) "Board" means the Texas Grain Producer Indemnity

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(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;

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

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

(E) loses its public warehouse license under:

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

(ii) Chapter 14.

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

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

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

The term includes:

(A) a purchaser;

(B) a warehouseman;

(C) a processor; or

(D) a commercial handler.

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

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

(b) The board shall be the certified organization to indemnify

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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;

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

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

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

(ii) Chapter 14.

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

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

The term includes:

(A) a purchaser;

(B) a warehouseman;

(C) a processor; or

(D) a commercial handler.

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

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

(b) The board shall be the certified organization to indemnify

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grain producers under this subchapter.

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

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

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

(A) the Corn Producers Association of Texas;

(B) the Texas Wheat Producers Association;

(C) the Texas Grain Sorghum Association;

(D) the Texas Soybean Association; and

(E) the Texas Farm Bureau; and

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

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

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

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

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

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

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

(d) A vacancy on the board, including a vacancy resulting from the failure of a board member to fulfill the board member's responsibilities, shall be filled in the manner

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grain producers under this subchapter.

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

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

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

(A) the Corn Producers Association of Texas;

(B) the Texas Wheat Producers Association;

(C) the Texas Grain Sorghum Association;

(D) the Texas Soybean Association; and

(E) the Texas Farm Bureau; and

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

(A) one representative of the Texas Agricultural Cooperative Council or its successor organization;

(B) one representative of the Texas Grain & Feed Association or its successor organization;

(C) one representative of the non-warehouse grain-buying industry; and

(D) one member with expertise in production agriculture financing.

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

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

(d) A vacancy on the board, including a vacancy resulting from the failure of a board member to fulfill the board member's responsibilities, shall be filled in the manner

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provided by Subsection (a). If a vacancy on the board is the result of an organization described by Subsection (a) dissolving or failing to fulfill its responsibilities under this subchapter, the commissioner may fill the vacancy by appointing an individual from the sector or industry represented by the organization.

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

- (1) review expenses of the board, claims made to the board by grain producers, and amounts paid on claims by the board;
- (2) coordinate all matters relating to the board, including the board's budget under Section 41.059, and the revenues necessary to accomplish the purposes of the board;
- (3) establish, maintain, or adjust the rate of assessments collected under Section 41.206; and
- (4) determine the most effective use of the board's budget to provide protection to grain producers.

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provided by Subsection (a). If a vacancy on the board is the result of an organization described by Subsection (a) dissolving or failing to fulfill its responsibilities under this subchapter, the commissioner may fill the vacancy by appointing an individual from the sector or industry represented by the organization.

Sec. 41.205. DUTIES OF BOARD. (a) The board shall meet at least **quarterly** to:

- (1) review expenses of the board, claims made to the board by grain producers, and amounts paid on claims by the board;
- (2) coordinate all matters relating to the board, including the board's budget under Section 41.059, and the revenues necessary to accomplish the purposes of the board;
- (3) establish, maintain, or adjust the rate of assessments collected under Section 41.206; and
- (4) determine the most effective use of the board's budget to provide protection to grain producers.

(b) Notwithstanding Chapter 551, Government Code, the board may hold an open or closed meeting by telephone conference call or video conference if:

- (1) immediate action or a quarterly meeting is required; and**
- (2) the location at which a quorum of the board convenes is inconvenient for any member of the board.**

(c) A meeting under Subsection (b) is subject to the notice requirements of Chapter 551, Government Code.

(d) Notice of a meeting under Subsection (b) must specify that the location at which meetings of the board are usually held is the location of the meeting.

(e) Each part of an open meeting under Subsection (b) shall be conducted in a manner that is audible to the public at the location specified in the notice of the meeting. The board shall ensure that each open meeting is tape recorded and that the tape recording is made available to the public after the

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

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

(c) The grain buyer may 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.

Sec. 41.207. ASSESSMENTS; APPLICABILITY OF OTHER LAW. (a) An assessment levied on grain producers shall be applied by the board to efforts relating to the indemnification of grain producers in this state, including administrative costs of conducting an assessment referendum.

(b) Assessments collected by the board are not state funds and are not required to be deposited in the state treasury.

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

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

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

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

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meeting.

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

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

(c) The grain buyer may 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.

(d) The board shall notify the grain producer of the manner by which the grain producer may initiate a claim under Section 41.208. The notice may be provided in a manner determined by the board.

Sec. 41.207. ASSESSMENTS; APPLICABILITY OF OTHER LAW. (a) An assessment levied on grain producers shall be applied by the board to efforts relating to the indemnification of grain producers in this state, including administrative costs of conducting an assessment referendum.

(b) Assessments collected by the board are not state funds and are not required to be deposited in the state treasury.

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

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

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

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

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(B) is unable to deliver to the grain producer grain held by the grain buyer for the grain producer as a bailment; and
(2) the grain producer provides to the board:
(A) written documentation showing that the grain was delivered to the grain buyer; and
(B) a copy of the written contract for purchase of the grain signed by the grain producer and the grain buyer and showing:
(i) the agreed price for the grain;
(ii) the amount of grain purchased; and
(iii) any other relevant term required by the board to establish facts related to the claim.
(b) A claim under this section must:
(1) be initiated not more than 60 days after the applicable claim initiation date; and

(2) be for a loss of grain delivered to the grain buyer not more than one year before the applicable claim initiation date.
Sec. 41.209. PAYMENT OF CLAIM. (a) After a claim is initiated by a grain producer under Section 41.208, the board may take any action necessary to:
(1) investigate the grain producer's claim; and
(2) determine the amount due to the grain producer within the limit prescribed by Subsection (b) and subject to Subsection (e).
(b) In determining the amount due to a grain producer under Subsection (a) for a loss of grain, the board may award the grain producer not more than 90 percent of:
(1) the value of the grain on the claim initiation date, as determined by board rule, if the grain has not been sold; or
(2) the contract price of the grain, if the grain has been sold.

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(B) is unable to deliver to the grain producer grain held by the grain buyer for the grain producer as a bailment; and
(2) the grain producer provides to the board:
(A) written documentation showing that the grain was delivered to the grain buyer; and
(B) a copy of the written contract for purchase of the grain signed by the grain producer and the grain buyer and showing:
(i) the agreed price for the grain;
(ii) the amount of grain purchased; and
(iii) any other relevant term required by the board to establish facts related to the claim.
(b) A claim under this section must:
(1) be initiated:
(A) not more than 60 days after the applicable claim initiation date; or
(B) before a date determined by the board to be reasonable, if the board determines such a date; and
(2) be for a loss of grain delivered to the grain buyer not more than one year before the applicable claim initiation date.
Sec. 41.209. PAYMENT OF CLAIM. (a) After a claim is initiated by a grain producer under Section 41.208, the board may take any action necessary to:
(1) investigate the grain producer's claim; and
(2) determine the amount due to the grain producer within the limit prescribed by Subsection (b) and subject to Subsection (e).
(b) In determining the amount due to a grain producer under Subsection (a) for a loss of grain, the board may award the grain producer not more than 90 percent of:
(1) the value of the grain on the claim initiation date, as determined by board rule, if the grain has not been sold; or
(2) the contract price of the grain, if the grain has been sold.
(c) The board shall make a determination under Subsection

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

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

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

(d) If claims filed with the board that are due to grain producers under this section exceed the amount of the board's budget allocated for the payment of claims, the board shall pay each grain producer on a prorated basis without regard to the order in which claims are made or approved. The board shall pay the remainder of the amount owed to each grain producer on a prorated basis from future revenue as the revenue is collected.

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

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

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

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

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

(A) payments made by the board;

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(a) within a reasonable period of time as established by the board.

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

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

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

(d) If claims filed with the board that are due to grain producers under this section exceed the amount of the board's budget allocated for the payment of claims, the board shall pay each grain producer on a prorated basis without regard to the order in which claims are made or approved. The board shall pay the remainder of the amount owed to each grain producer on a prorated basis from future revenue as the revenue is collected.

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

(1) if the grain producer has failed to pay assessments for the current growing season under Section 41.206;

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

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

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

(A) payments made by the board;

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(B) payments made from a grain warehouse operator's bond;
(C) payments ordered by a bankruptcy court; or
(D) a recovery under a state or federal crop insurance policy or program; or
(5) if documentation submitted by the grain producer demonstrates that deferred payment on sold grain was beyond normal and customary practices.

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

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

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

(2) 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 this subchapter.

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

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

(1) notice and collection of assessments;

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

(3) administration of the board's duties;

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(B) payments made from a grain warehouse operator's bond;
(C) payments ordered by a bankruptcy court; or
(D) a recovery under a state or federal crop insurance policy or program; or
(5) if documentation submitted by the grain producer demonstrates that deferred payment on sold grain was beyond normal and customary practices.

() Notwithstanding Subsection (f)(3), if the board determines that the documentation submitted in support of a grain producer's claim is incomplete, the board shall give the grain producer an opportunity to provide complete documentation.

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

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

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

(2) 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 this subchapter.

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

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

(1) notice and collection of assessments;

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

(3) administration of the board's duties;

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(4) the statewide referendum conducted under Section 41.212;

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

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

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

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

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

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

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

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

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

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

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

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

(2) the estimated amount of the assessment proposed to be

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(4) the statewide referendum conducted under Section 41.212;

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

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

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

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

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

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

(e) A referendum is approved if the referendum meets the requirements of Section 41.031.

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

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

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

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

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

(2) the estimated amount of the assessment proposed to be

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collected, as determined by the board, and the basis for which the assessment will be collected; and
(3) a description of the manner in which the assessment is to be collected and the proceeds administered and used.
(b) The commissioner shall publish the notice under Subsection (a) in one or more statewide or regional newspapers that provide reasonable notice throughout the state. The notice shall be published at least 60 days before the date of the referendum. In addition, at least 60 days before the date of the referendum the commissioner shall give direct written notice to the county agent in each county of this state.
Sec. 41.214. REFUND OF ASSESSMENTS. (a) Except as provided by Subsection (d), a grain producer who has paid an assessment under Section 41.206 may obtain a refund of the amount paid by filing an application for refund with the board.
(b) The application must:
(1) be in writing, on a form prescribed by the board for that purpose; and
(2) be accompanied by:
(A) proof of payment of the assessment; and
(B) an affidavit stating that the grain producer does not wish to participate in or be covered by the indemnification established under this subchapter.
(c) A grain producer who receives a refund under this section may not make a claim for indemnification under Section 41.208 for the grain for which the refund was received.
(d) If requests for refunds under this section exceed the amount of the board's budget allocated for the payment of claims, the board shall issue refunds to each grain producer on a prorated basis without regard to the order in which requests for refunds are made. The board shall pay the remainder of the amount owed to each grain producer on a prorated basis from future revenue as the revenue is collected.

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collected, as determined by the board, and the basis for which the assessment will be collected; and
(3) a description of the manner in which the assessment is to be collected and the proceeds administered and used.
(b) The commissioner shall publish the notice under Subsection (a) in one or more statewide or regional newspapers that provide reasonable notice throughout the state. The notice shall be published at least 90 days before the date of the referendum. In addition, at least 90 days before the date of the referendum the commissioner shall give direct written notice to the county agent in each county of this state.
Sec. 41.214. REFUND OF ASSESSMENTS. (a) Except as provided by Subsection (d), a grain producer who has paid an assessment under Section 41.206 may obtain a refund of the amount paid by filing an application for refund with the board.
(b) The application must:
(1) be in writing, on a form prescribed by the board for that purpose; and
(2) be accompanied by:
(A) proof of payment of the assessment; and
(B) an affidavit stating that the grain producer does not wish to participate in or be covered by the indemnification established under this subchapter.
(c) A grain producer who receives a refund under this section may not make a claim for indemnification under Section 41.208 for the grain for which the refund was received.
(d) If requests for refunds under this section exceed the amount of the board's budget allocated for the payment of claims, the board shall issue refunds to each grain producer on a prorated basis without regard to the order in which requests for refunds are made. The board shall pay the remainder of the amount owed to each grain producer on a prorated basis from future revenue as the revenue is collected.

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

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

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

(b) The members of the board appointed under Subsection (a) of this section shall 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.

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

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

(b) The board shall post the report online on the board's Internet website. [FA1(1)-(12)]

SECTION 4. Same as House version.

SECTION 5. Same as House version.

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