

1-1 By: Estes, Kolkhorst S.B. No. 1099
1-2 (In the Senate - Filed March 9, 2015; March 16, 2015, read
1-3 first time and referred to Committee on Agriculture, Water, and
1-4 Rural Affairs; April 1, 2015, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 7, Nays 0;
1-6 April 1, 2015, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			

1-16 COMMITTEE SUBSTITUTE FOR S.B. No. 1099 By: Hall

1-17 A BILL TO BE ENTITLED
1-18 AN ACT

1-19 relating to the operation and functions of the Texas Grain Producer
1-20 Indemnity Board.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Section 41.102, Agriculture Code, is amended to
1-23 read as follows:

1-24 Sec. 41.102. SUSPENSION OR REVOCATION OF LICENSE. In
1-25 addition to other remedies provided by law, a violation of any
1-26 provision of Subchapter B, C, D, E, or I [~~Subchapters B-E~~] of this
1-27 chapter is grounds for suspension or revocation of any license or
1-28 permit issued by the commissioner. The suspension or revocation
1-29 shall be conducted in accordance with the procedures provided by
1-30 law for suspension or revocation on the basis of other grounds.

1-31 SECTION 2. Section 41.201, Agriculture Code, is amended by
1-32 adding Subdivisions (3-a) and (8) to read as follows:

1-33 (3-a) "Fund" means the grain producer indemnity fund.

1-34 (8) "Reinsurance" means an insurance product
1-35 purchased by the board to reduce the financial risk and capital
1-36 balance associated with the function of the board.

1-37 SECTION 3. Subchapter I, Chapter 41, Agriculture Code, is
1-38 amended by adding Section 41.2035 to read as follows:

1-39 Sec. 41.2035. FUND. (a) The grain producer indemnity fund
1-40 is a trust fund outside the state treasury to be held and
1-41 administered by the board, without appropriation, for the payment
1-42 of claims against a grain buyer who has experienced a financial
1-43 failure.

1-44 (b) The board shall deposit assessments remitted under
1-45 Section 41.206 in the fund.

1-46 (c) Interest or other income from investment of the fund
1-47 shall be deposited to the credit of the fund.

1-48 (d) As a part of the annual budget proposal procedure
1-49 described by Section 41.059, the board shall set a minimum balance
1-50 for the fund to be held in reserve to pay for administrative costs
1-51 in the event that claims against the fund exceed the total balance
1-52 of the fund. The board shall post the minimum balance set under
1-53 this subsection on the board's Internet website.

1-54 SECTION 4. The heading to Section 41.205, Agriculture Code,
1-55 is amended to read as follows:

1-56 Sec. 41.205. POWERS AND DUTIES OF BOARD.

1-57 SECTION 5. Section 41.205, Agriculture Code, is amended by
1-58 adding Subsection (f) to read as follows:

1-59 (f) The board may borrow money, with the approval of the
1-60 commissioner, as necessary to implement this subchapter.

2-1 SECTION 6. Section 41.206(a), Agriculture Code, is amended
2-2 to read as follows:

2-3 (a) Except as provided by this subsection, a grain buyer
2-4 shall collect assessments in the manner prescribed for processors
2-5 under Section 41.081. The assessment shall be collected at the
2-6 first point of sale. Section 41.081(b) does not apply to the
2-7 collection of assessments under this section.

2-8 SECTION 7. Sections 41.209(b) and (f), Agriculture Code,
2-9 are amended to read as follows:

2-10 (b) In determining the amount due to a grain producer under
2-11 Subsection (a) for a loss of grain, the board may award the grain
2-12 producer 85 [~~not more than 90~~] percent of:

2-13 (1) the value of the grain on the claim initiation
2-14 date, as determined by board rule, if the grain has not been sold;
2-15 or

2-16 (2) the contract price of the grain, if the grain has
2-17 been sold.

2-18 (f) The board may deny a grain producer's claim in whole or
2-19 in part:

2-20 (1) if the grain producer has failed to pay
2-21 assessments [~~for the current growing season~~] under Section 41.206;

2-22 (2) if the applicable grain buyer has a history of
2-23 failure to collect assessments as required by Section 41.206;

2-24 (3) if the documentation submitted by the grain
2-25 producer in support of the grain producer's claim is incomplete,
2-26 false, or fraudulent;

2-27 (4) to prevent the grain producer from recovering from
2-28 multiple payments an amount greater than the amount the grain
2-29 producer lost due to the financial failure of a grain buyer or to
2-30 the grain buyer's refusal, failure, or inability to deliver to the
2-31 grain producer grain held by the grain buyer as a bailment,
2-32 including:

2-33 (A) payments made by the board;

2-34 (B) payments made from a grain warehouse
2-35 operator's bond;

2-36 (C) payments ordered by a bankruptcy court; or

2-37 (D) a recovery under a state or federal crop
2-38 insurance policy or program; or

2-39 (5) if documentation submitted by the grain producer
2-40 demonstrates that deferred payment on sold grain was beyond normal
2-41 and customary practices.

2-42 SECTION 8. Section 41.210, Agriculture Code, is amended to
2-43 read as follows:

2-44 Sec. 41.210. REIMBURSEMENT OF BOARD BY GRAIN BUYER;
2-45 SUBROGATION OF RIGHTS; REINSURANCE. (a) If the board pays a claim
2-46 against a grain buyer, the board is subrogated to the extent of the
2-47 amount paid to a grain producer by the board to all rights of the
2-48 grain producer against ~~+~~

2-49 [~~(1)~~] the grain buyer [~~, to the extent of the amount~~
2-50 ~~paid to a grain producer by the board,~~] and

2-51 [~~(2)~~] any other entity from which the grain producer
2-52 is entitled to a payment for the loss giving rise to the grain
2-53 producer's claim under this subchapter.

2-54 (b) Funds recovered under this section shall be deposited
2-55 with the depository bank selected by the board under Section
2-56 41.060.

2-57 (c) The board may purchase reinsurance policies to mitigate
2-58 the board's financial risks.

2-59 SECTION 9. Section 41.211, Agriculture Code, is amended to
2-60 read as follows:

2-61 Sec. 41.211. RULES. Except as provided by Section 41.212,
2-62 the board may adopt rules as necessary to implement this
2-63 subchapter, including rules relating to:

2-64 (1) notice and collection of assessments;

2-65 (2) the orderly distribution of refunds;

2-66 (3) the management of the board's budget;

2-67 (4) the use of insurance and reinsurance products;

2-68 (5) [~~(3)~~] administration of the board's duties;

2-69 (6) [~~(4)~~] the statewide referendum conducted under

3-1 Section 41.212;
3-2 (7) [~~45~~] the selection of agents, designees, or
3-3 devices to carry out the intent of the board; and
3-4 (8) [~~46~~] guidelines for industry practices that do or
3-5 do not qualify for indemnification by the board.

3-6 SECTION 10. Section 41.212(e), Agriculture Code, is amended
3-7 to read as follows:

3-8 (e) A referendum is approved if a majority of votes cast are
3-9 in favor of the referendum [~~meets the requirements of Section~~
3-10 ~~41.031~~].

3-11 SECTION 11. Subchapter I, Chapter 41, Agriculture Code, is
3-12 amended by adding Section 41.2145 to read as follows:

3-13 Sec. 41.2145. REFUND OF ASSESSMENTS. (a) A grain producer
3-14 who has paid an assessment under Section 41.206 may be eligible for
3-15 a refund from excess money in the indemnity fund as provided by this
3-16 section.

3-17 (b) As a part of the annual budget proposal procedure
3-18 described by Section 41.059, the board shall review the budget for
3-19 the next year and the board's current financial status. Based on
3-20 that review, the board shall determine whether funds are available
3-21 in excess of the minimum fund balance to issue refunds to grain
3-22 producers who paid an assessment under Section 41.206.

3-23 (c) The board shall adopt rules regarding the procedure for
3-24 determining the amount of a grain producer's refund and the timing,
3-25 method, and order of refund issuance.

3-26 SECTION 12. Subchapter I, Chapter 41, Agriculture Code, is
3-27 amended by adding Section 41.216 to read as follows:

3-28 Sec. 41.216. ADMINISTRATIVE REVIEW. (a) The board by rule
3-29 shall establish an administrative review process to informally
3-30 review and resolve claims arising from an action of the board under
3-31 this subchapter. The board shall adopt rules:

3-32 (1) designating which board actions are subject to
3-33 review under this section; and

3-34 (2) outlining available remedial actions.

3-35 (b) A person may appeal an administrative review decision
3-36 made by the board under Subsection (a) to the commissioner.

3-37 (c) A person may appeal a decision of the commissioner in
3-38 the manner provided for a contested case under Chapter 2001,
3-39 Government Code.

3-40 (d) This section does not waive this state's sovereign
3-41 immunity.

3-42 SECTION 13. Section 41.214, Agriculture Code, is repealed.

3-43 SECTION 14. (a) The change in law made by this Act to
3-44 Section 41.102, Agriculture Code, applies only to conduct that
3-45 occurs on or after the effective date of this Act. Conduct that
3-46 occurs before the effective date of this Act is governed by the law
3-47 in effect on the date the conduct occurs, and the former law is
3-48 continued in effect for that purpose.

3-49 (b) The repeal of Section 41.214, Agriculture Code, by this
3-50 Act applies only to an application for a refund submitted on or
3-51 after the effective date of this Act. An application for a refund
3-52 submitted before the effective date of this Act is governed by the
3-53 law in effect on the date the application was submitted, and the
3-54 former law is continued in effect for that purpose.

3-55 SECTION 15. This Act takes effect immediately if it
3-56 receives a vote of two-thirds of all the members elected to each
3-57 house, as provided by Section 39, Article III, Texas Constitution.
3-58 If this Act does not receive the vote necessary for immediate
3-59 effect, this Act takes effect September 1, 2015.

3-60 * * * * *