

## **BILL ANALYSIS**

Senate Research Center  
81R23004 E

C.S.S.B. 1016  
By: Estes, Hegar  
Government Organization  
4/8/2009  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The Texas Department of Agriculture (TDA), Prescribed Burning Board (PBB), and Texas-Israel Exchange Fund Board (board) are subject to the Sunset Act and will be abolished on September 1, 2009, unless continued by the legislature. TDA encompasses all phases of modern agriculture, agricultural businesses, and consumer protection. To fulfill its mission of making Texas the leader in agriculture, TDA promotes Texas agricultural products; promotes economic development in rural communities; regulates pesticides, measuring devices, and agricultural commodities; controls destructive plant pests and diseases; and administers federal nutrition programs for children and adults.

Prescribed burning serves a need in Texas for controlling vegetative fuels that can contribute to wildfires and for managing land to maintain or restore ecosystems. Regulation of certified prescribed burn managers is intended to ensure that those responsible for conducting these burns have the training, experience, and financial responsibility to protect the interests of land owners. PBB, however, has no enforcement authority against certified prescribed burn managers who are negligent in conducting a burn or who fail to maintain insurance coverage required for certification. PBB also lacks the ability to go after unlicensed activity, among other limitations.

The board provides funding for agricultural research projects intended to be of mutual benefit to Texas and Israel. While the board is able to leverage state dollars to fund useful research for Texas agriculture, the funding for and results of these projects are not transparent to the legislature, the agriculture industry, or the public. The same functions could be provided by an advisory committee, rather than a semi-independent board.

C.S.S.B. 1016 enacts the recommendations of the Sunset Advisory Commission relating to TDA, PBB, and the board. The bill also creates the Texas Rural Investment Fund.

C.S.S.B. 1016 also provides that the members of the Texas Agricultural Finance Authority and the Produce Recovery Fund Board will be appointed by the commissioner of agriculture, rather than the governor, and that the members of the State Seed and Plant Board will be appointed by the commissioner and certain other officials, rather than the governor, and removes the power of the senate to advise on and consent to those appointments.

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the board of directors (board) for the Texas Agricultural Finance Authority (TAFA) is modified in SECTION 1.03 (Section 44.007, Agriculture Code) and SECTION 1.08 (Section 58.023, Agriculture Code) of this bill.

Rulemaking authority is expressly granted to the board in SECTION 1.09 (Section 58.041, Agriculture Code), SECTION 1.13 (Section 58.052, Agriculture Code), SECTION 1.16 (Section 58.072, Agriculture Code), and SECTION 1.17 (Section 58.091, Agriculture Code) of this bill.

Rulemaking authority is expressly granted to the commissioner of agriculture (commissioner) in SECTION 4.02 (Section 50B.002, Agriculture Code) of this bill.

Rulemaking authority previously granted to the commissioner is modified in SECTION 4.07 (Section 110.002, Alcoholic Beverage Code) of this bill.

Rulemaking authority is expressly granted to the Texas Department of Agriculture (TDA) in SECTION 2.10 (Section 153.102, Natural Resources Code), SECTION 6.03 (Sections 12A.101 and 12A.201, Agriculture Code), and SECTION 9.02 (Section 12.046, Occupations Code) of this bill.

Rulemaking authority previously granted to TDA is modified in SECTION 5.07 (Section 13.261, Agriculture Code) of this bill.

Rulemaking authority previously granted to TDA is rescinded in SECTION 5.09 (Section 52.151, Agriculture Code) of this bill.

## **SECTION BY SECTION ANALYSIS**

### ARTICLE 1. TEXAS AGRICULTURAL FINANCE AUTHORITY

SECTION 1.01. Amends Sections 44.001(1) and (2), Agriculture Code, to redefine "eligible lending institution" and "eligible borrower."

SECTION 1.02. Amends the heading to Section 44.007, Agriculture Code, to read as follows:

Sec. 44.007. INTEREST RATE REDUCTION PROGRAM.

SECTION 1.03. Amends Sections 44.007(a), (c), (d), (k), and (l), Agriculture Code, as follows:

(a) Requires the board of directors (board) for the Texas Agricultural Finance Authority (TAFA) to establish an interest rate reduction, rather than a linked deposit, program to foster the creation and expansion of enterprises based on agriculture in this state. Deletes existing text requiring the board to encourage commercial lending for the enhanced production, processing, and marketing of certain agricultural crops, encourage the development or expansion of business in rural areas of this state, and finance water conservation projects or equipment for agricultural production purposes.

(c) Requires the board to promulgate rules for the loan portion of the interest rate reduction, rather than linked deposit, program. Deletes existing text requiring that the rules include a list of the categories of crops customarily grown in Texas, with consideration given to the Texas Agricultural Statistics Service information available and relevant to this determination; a list of crops that are alternative agricultural crops, with consideration given to the Texas Agricultural Statistics Service information available and relevant to this determination; identification of criteria for a project eligible for natural disaster assistance; and identification of projects and types of equipment considered as water conservation projects or equipment for agricultural production purposes.

(d) Makes a conforming change.

(k) Deletes existing text authorizing the policy objectives of the rules adopted by the board to include preferences to achieve adequate geographic distribution of loans, assist certain industries, encourage certain practices including water conservation, and encourage value-added processing of agricultural products.

(l) Makes a conforming change.

SECTION 1.04. Amends Sections 44.010(a) and (b), Agriculture Code, as follows:

(a) Authorizes that, at any one time, not more than \$30 million, rather than \$30 million of which \$10 million is authorized to be used only to finance water conservation projects and \$5 million is authorized to be used to finance the economic development of business in rural areas, be placed in linked deposits under this chapter.

(b) Provides that the maximum amount of a loan under this chapter, rather than a loan under this chapter to process and market Texas agricultural crops, is \$500,000. Deletes existing text providing that the maximum amount of a loan under this chapter to produce

alternative agricultural crops in this state is \$250,000; the maximum amount of a loan under this chapter to finance water conservation projects or equipment for agricultural production purposes is \$250,000; the maximum amount of a loan under this chapter to finance production of a crop declared eligible for natural disaster relief, as defined by board rule, is \$250,000; and the maximum amount of a loan under this chapter to finance a business in a rural area is \$250,000.

SECTION 1.05. Amends Section 58.012, Agriculture Code, by amending Subsections (a)-(c) and adding Subsection (g), as follows:

(a) Provides that TAFSA is governed by a board composed of the commissioner of agriculture (commissioner), the director of the institute for International Agribusiness Studies at Prairie View A&M University, and nine, rather than seven, members appointed by the commissioner, rather than the governor with the advice and consent of the senate. Requires members of the board to be appointed in the numbers specified and from certain categories including two persons who represent young farmers and the interests of young farmers. Makes a nonsubstantive change.

(b) Provides that the members of the board serve staggered terms of two years, with the terms of four, rather than three, members expiring on January 1 of each even-numbered year and the terms of five, rather than four, members expiring on January 1 of each odd-numbered year.

(c) Requires that any vacancy occurring in an appointed position on the board be filled by the commissioner, rather than the governor, for the unexpired term.

(g) Authorizes the commissioner to consider age, notwithstanding Subsection (f) (relating to appointments to the board), in making appointments under Subsection (a)(5) (relating to two persons who represent young farmers occupying seats on the board of directors).

SECTION 1.06. Amends Section 58.013(a), Agriculture Code, to make conforming changes.

SECTION 1.07. Amends Section 58.0176(a), Agriculture Code, to delete existing text requiring the member, before the member is authorized to be confirmed by the senate, to complete at least one course of the training program established under this section.

SECTION 1.08. Amends Sections 58.023(c) and (d), Agriculture Code, as follows:

(c) Requires the board to charge an administrative fee for guaranteeing a loan under Subchapter E (Young Farmer Loan Guarantee Program) that is prohibited from being less than one percent of the amount of the guaranteed loan.

(d) Requires the board to by rule adopt an agreement to be used between a lender and an approved applicant under which TAFSA makes a payment from the Texas agricultural fund for the purpose of providing a reduced interest rate on a loan guarantee to a borrower, rather than a borrower under this subchapter. Requires that the agreement require the borrower to use the proceeds of the loan for the purposes of the program under which the payment is made.

SECTION 1.09. Amends Subchapter D, Chapter 58, Agriculture Code, by adding Section 58.041, as follows:

Sec. 58.041. ISSUANCE OF DEBT BY TEXAS PUBLIC FINANCE AUTHORITY.

(a) Defines "debt instrument."

(b) Provides that the Texas Public Finance Authority (TPFA) has the exclusive authority to act on behalf of TAFSA in issuing debt instruments authorized to be issued by TAFSA. Provides that a reference in law to a debt instrument issued by TAFSA, in the context of a debt instrument issued on or after September 1, 2009, means a debt instrument issued by the TPFA on behalf of TAFSA.

(c) Requires TAFSA, notwithstanding Section 58.034(e) (relating to prohibiting a charge or fee by any other agency in the issuance of bonds), to pay all costs incurred by the TPFA for issuing debt instruments on behalf of TAFSA and associated fees and expenses.

(d) Requires TAFSA, when the board authorizes the issuance of debt instruments to fund a loan, to notify TPFA of the amount of the loan and the receipt of the loan and request TPFA to issue debt instruments in an amount necessary to fund the loan. Requires TAFSA and TPFA to determine the amount and time of the debt instrument issue to best provide funds for one or multiple loans.

(e) Authorizes TPFA, at the request of TAFSA, to issue debt instruments to provide money to the Texas agricultural fund.

(f) Authorizes TPFA to sell debt instruments in any manner it determines to be in the best interest of TAFSA, except that it is prohibited from selling a debt instrument that has not been approved by the attorney general and registered with the comptroller of public accounts (comptroller).

(g) Requires the board, in consultation with TPFA, to adopt rules containing criteria for evaluating the creditworthiness of loan applicants and the financial feasibility of projects to be funded with debt instruments issued by TPFA on behalf of TAFSA.

(h) Authorizes TPFA to enter into a credit agreement for a debt instrument issued by the TPFA on behalf of TAFSA for a period and on conditions approved by TPFA.

(i) Provides that this subsection applies only in relation to general obligation debt instruments. Provides that to the extent other sources of revenue available for payment of TAFSA's debts are insufficient and in accordance with the Texas Constitution, general revenue is to be appropriated to TPFA in an amount determined by TPFA to be necessary to pay the principal, premium if any, and interest on general obligation debt instruments issued by the TPFA on behalf of TAFSA, and that amount is required to be specified in the biennial appropriations acts.

SECTION 1.10. Amends the heading to Subchapter E, Chapter 58, Agriculture Code, to read as follows:

#### SUBCHAPTER E. AGRICULTURAL LOAN GUARANTEE PROGRAM

SECTION 1.11. Amends Section 58.051(2), Agriculture Code, to redefine "eligible applicant." Makes nonsubstantive changes.

SECTION 1.12. Amends the heading to Section 58.052, Agriculture Code, to read as follows:

#### Sec. 58.052. AGRICULTURAL LOAN GUARANTEE PROGRAM.

SECTION 1.13. Amends Section 58.052, Agriculture Code, by amending Subsections (b), (c), and (e) and adding Subsection (f), as follows:

(b) Requires the board by rule to establish tiered loan guarantee limits. Requires that to be eligible to be guaranteed under this subchapter, a loan with a term of more than one year have a fixed interest rate. Deletes existing text prohibiting the guarantee amount from exceeding the lesser of \$250,000 or 90 percent of the loan amount.

(c) Prohibits the aggregate amount guaranteed under this subchapter from exceeding the lesser of three-fourths of the amount contained in the Texas agricultural fund or \$12 million, rather than twice the amount contained in the young farmer loan guarantee account within the Texas agricultural fund.

(e) Requires the board to adopt an agreement, to be used between a commercial lender and an approved eligible applicant, under which the program provides a payment from money in the Texas agricultural fund, rather than the young farmer loan guarantee account, for the purpose of providing a reduced interest rate on a loan guarantee to a borrower under this subchapter. Prohibits the maximum rate reduction under this subsection per year for each borrower from exceeding three percentage points or an amount that results in \$10,000 in interest savings for the borrower for the year. Makes a nonsubstantive change.

(f) Requires the board by rule to establish a certified lender program under which the board is authorized to certify commercial lenders to participate in the agricultural loan guarantee program in order to expedite the processing of loan guarantee applications by the board.

SECTION 1.14. Amends Section 58.056, Agriculture Code, to make a conforming change.

SECTION 1.15. Amends Sections 58.057(b) and (d), Agriculture Code, by transferring them to Section 58.032, Agriculture Code, and redesignating them as Subsections (g) and (h) of that section, as follows:

(g) Redesignates Subsection (b) as Subsection (g). Provides that the fund includes grants and donations made for the purposes of the programs administered by the TAFE and any other money received under this chapter, rather than providing that the account consists of funds and transfers made to the account, grants, and donations made for the purpose of the young farmer loan guarantee program, income earned on money in the account, and any other money received under this subchapter. Requires that income and interest earned, notwithstanding Section 404.071 (Disposition of Interest on Investments), Government Code, on money in the fund, rather than in the account, be deposited to the credit of the fund. Deletes existing text requiring TAFE, at the end of each state fiscal year to transfer to the general credit of the Texas agricultural fund any interest earned on the account that remains after payment of any administrative expenses of the program. Makes conforming changes.

(h) Redesignates Subsection (d) as Subsection (h). Makes no further changes to this subsection.

SECTION 1.16. Amends Chapter 58, Agriculture Code, by adding Subchapter F, as follows:

#### SUBCHAPTER F. YOUNG FARMER INTEREST RATE REDUCTION PROGRAM

Sec. 58.071. DEFINITIONS. Defines "eligible lending institution" and "linked deposit."

Sec. 58.072. YOUNG FARMER INTEREST RATE REDUCTION PROGRAM. (a) Requires the board to establish a young farmer interest rate reduction program to promote the creation and expansion of agricultural businesses by young people in this state.

(b) Requires an applicant, to be eligible to participate in the young farmer interest rate reduction program, be at least 18 years of age but younger than 46 years of age.

(c) Requires the board to approve or disapprove any and all applications under this subchapter, provided that the board is authorized to delegate this authority to the commissioner.

(d) Requires the board to adopt rules for the loan portion of the young farmer interest rate reduction program.

(e) Authorizes an eligible lending institution, in order to participate in the young farmer interest rate reduction program, to solicit loan applications from eligible applicants.

(f) Requires the eligible lending institution, after reviewing an application and determining that the applicant is eligible and creditworthy, to send the application for a linked deposit loan to the administrator of TAFSA.

(g) Requires the eligible lending institution to certify the interest rate applicable to the specific eligible applicant and attach it to the application sent to the administrator of TAFSA.

(h) Requires the board or the commissioner, after reviewing each loan application under this subchapter, to recommend to the comptroller the acceptance or rejection of the application.

(i) Requires the comptroller, after acceptance of the application, to place a linked deposit with the applicable eligible lending institution for the period the comptroller considers appropriate. Prohibits the comptroller from placing a deposit for a period extending beyond the state fiscal biennium in which it is placed. Authorizes the comptroller, subject to the limitation described by Section 58.075, to place deposits at an interest rate described by Section 58.071(2) (relating to defining linked deposit).

(j) Requires the eligible lending institution, represented by the comptroller, before the placing of a linked deposit, to enter into a written deposit agreement containing the conditions on which the linked deposit is made.

(k) Authorizes the comptroller, if a lending institution holding linked deposits ceases to be either a state depository or a Farm Credit System institution headquartered in this state, to withdraw the linked deposits.

(l) Authorizes the board to adopt rules that create a procedure for determining priorities for loans granted under this subchapter. Requires that each rule adopted state the policy objective of the rule.

(m) Provides that a lending institution is not ineligible to participate in the young farmer interest rate reduction program solely because a member of the board is also an officer, director, or employee of the lending institution, provided that a board member is required to recuse himself or herself from any action taken by the board on an application involving a lending institution by which the board member is employed or for which the board member serves as an officer or director.

(n) Requires that linked deposits under the young farmer interest rate reduction program be funded from the Texas agricultural fund.

Sec. 58.073. COMPLIANCE. (a) Requires an eligible lending institution, on accepting a linked deposit, to loan money to eligible applicants in accordance with the deposit agreement and this subchapter. Requires the eligible lending institution to forward a compliance report to the board.

(b) Requires the board to monitor compliance with this subchapter and inform the comptroller of noncompliance on the part of an eligible lending institution.

Sec. 58.074. STATE LIABILITY PROHIBITED. Provides that the state is not liable to an eligible lending institution for payment of the principal, interest, or late charges on a loan made under this subchapter. Provides that a delay in payment or default on a loan by a borrower does not affect the validity of the deposit agreement. Provides that linked deposits are not an extension of the state's credit within the meaning of any state constitutional prohibition.

Sec. 58.075. LIMITATIONS IN PROGRAM. (a) Provides that the maximum amount of a loan under this subchapter is \$500,000.

(b) Authorizes a loan granted under this subchapter to be used for any agriculture-related operating expense, including the purchase or lease of land or fixed assets acquisition or improvement, as identified in the application.

SECTION 1.17. Amends Chapter 58, Agriculture Code, by adding Subchapter G, to read as follows:

#### SUBCHAPTER G. YOUNG FARMER GRANT PROGRAM

Sec. 58.091. GRANT PROGRAM. (a) Requires TAFSA to administer a young farmer grant program. Requires that a grant be for the purpose of fostering the creation and expansion of agricultural businesses by young people in this state.

(b) Requires the board to adopt rules governing the operation of the program and selection criteria for grant recipients.

(c) Requires the board to select grant recipients.

Sec. 58.092. ELIGIBILITY. Requires a person, to be eligible to receive a grant under this subchapter, to be an agricultural producer who is at least 18 years of age but younger than 46 years of age and provide matching funds in the amount of not less than one dollar for each dollar of grant money received.

Sec. 58.093. AMOUNT OF GRANTS. Prohibits a grant under the young farmer grant program from being less than \$5,000 or more than \$20,000.

Sec. 58.094. APPLICATIONS. (a) Requires TAFSA to accept grant applications during two application periods each year.

(b) Requires applicants to submit an application on a form approved by the board or the board's designee.

Sec. 58.095. FUNDING. Provides that the source of the funds for the young farmer grant program is the Texas agricultural fund.

SECTION 1.18. Amends Section 1232.101, Government Code, as follows:

Sec. 1232.101. ISSUANCE OF BONDS FOR CERTAIN STATE AGENCIES. Provides that TPFSA has the exclusive authority with respect to all bonds authorized to be issued by or on behalf of certain entities, including TAFSA, to act on behalf of those entities in issuing bonds on their behalf.

SECTION 1.19. Amends Section 1372.028(d), Government Code, to delete existing text providing that an issuer is not required to provide the statement required by Subsection (c)(3)(F) (relating to required statements on application for reservation), if the issuer is TAFSA.

SECTION 1.20. Amends Section 502.174(b), Transportation Code, to delete existing text to require the county assessor-collector to send an assessment collected under this section to the comptroller, at the time and in the manner prescribed by TAFSA, for deposit in the Texas agricultural fund to the credit of the young farmer loan guarantee account.

SECTION 1.21. Repealer: Sections 44.001(3) (relating to the definition of alternative agricultural crops), 58.0173(c) (relating to notification by the commissioner of potential ground for removal), 58.0211(b) (relating to preference to value-added agricultural business), 58.057(a) (relating to the Texas agricultural fund), (c) (relating to the board spending not more than \$100,000 each fiscal year), and (e) (relating to the authority of the board of directors of TAFSA), Agricultural Code.

Repealer: Section 1372.0235 (Dedication of Portion of State Ceiling to Texas Agricultural Finance Authority), Government Code.

SECTION 1.22. Provides that on the effective date of this Act the young farmer loan guarantee program under Subchapter E, Chapter 58, Agriculture Code, as that subchapter existed before amendment by this Act, is abolished; and the agricultural loan guarantee program under Subchapter E, Chapter 58, Agriculture, as amended by this Act, is established.

SECTION 1.23. Provides that on the effective date of this Act, the young farmer loan guarantee account is abolished and all money in the account on that date remains in the Texas agricultural fund. Requires that all deposits purportedly made to the account on or after that date be deposited in the Texas agricultural fund. Provides that all references in law or rule to the young farmer loan guarantee account mean the Texas agricultural fund.

SECTION 1.24. (a) Requires the commissioner, as soon as practicable on or after the effective date of this Act, to appoint two members to the board who represent young farmers and the interests of young farmers. Requires the commissioner, in appointing those members, to appoint one person to a term expiring January 1, 2010, and one to a term expiring January 1, 2011.

(b) Provides that the changes in law made by this Act by the amendment of Section 58.012, Agriculture Code, do not affect the entitlement of a member of the board serving on the board immediately before the effective date of this Act to continue to serve on the board and carry out the board's functions for the remainder of the member's term. Provides that this Act does not prohibit a person who is a member of the board on the effective date of this Act from being reappointed to the board if the person has the qualifications required for a member under Section 58.012, Agriculture Code, as amended by this Act. Makes application of this Act prospective.

SECTION 1.25. Provides that Section 58.041(b), Agriculture Code, as added by this Act, does not apply to the extension, renewal, or renegotiation of debt issued by TAFA before the effective date of this Act. Provides that the extension, renewal, or renegotiation of debt issued by TAFA before the effective date of this Act is governed by the law in effect immediately before that date, and the former law is continued in effect for that purpose.

## ARTICLE 2. PRESCRIBED BURNING BOARD

SECTION 2.01. Amends Section 153.001, Natural Resources Code, as follows:

Sec. 153.001. New heading: DEFINITIONS. Defines "board" and "department." Makes nonsubstantive changes.

SECTION 2.02. Amends Subchapter A, Chapter 153, Natural Resources Code, by adding Section 153.004, as follows:

Sec. 153.004. PRESCRIBED BURNING IN STATE OF EMERGENCY OR DISASTER. Authorizes a certified and insured prescribed burn manager to conduct a burn in a county in which a state of emergency or state of disaster has been declared by the governor or the president of the United States, unless the declaration expressly prohibits all outdoor burning.

SECTION 2.03. Amends Section 153.041(a), Natural Resources Code, as follows:

(a) Provides that the Prescribed Burning Board (board) is established within TDA, rather than the Department of Agriculture, and is composed of an employee of the Texas Forest Service designated by the director of the Texas Forest Service; an employee of the Parks and Wildlife Department (TPWD) appointed by the executive director of TPWD; an employee of the Texas Commission on Environmental Quality (TCEQ), rather than the Texas Natural Resource Conservation Commission (TNRCC), appointed by the executive director of the TCEQ, rather than TNRCC; an employee of the Texas AgriLife, rather than Agricultural, Extension Service appointed by the executive director of the Texas



AgriLife Extension Service; an employee of Texas AgriLife Research, rather than Agricultural Experiment Station, appointed by the director of Texas AgriLife Research; an employee of the Texas Tech University Range and Wildlife Department appointed by the dean of the Texas Tech University College of Agricultural Sciences and Natural Resources; and an employee of TDA appointed by the commissioner. Makes conforming and nonsubstantive changes.

SECTION 2.04. Amends Section 153.044, Natural Resources Code, as follows:

Sec. 153.004. SUNSET PROVISION. Provides that the board is subject to Chapter 325, Government Code (Texas Sunset Act). Requires the board to be reviewed during the period in which TDA is reviewed. Deletes existing text providing that unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2009.

SECTION 2.05. Amends Section 153.046, Natural Resources Code, to require the board to develop a comprehensive training curriculum for certified and insured prescribed burn managers; establish standards for certification, recertification, and training for certified and insured prescribed burn managers; and establish minimum insurance requirements for certified and insured prescribed burn managers.

SECTION 2.06. Amends Section 153.047, Natural Resources Code, as follows:

Sec. 153.047. PRESCRIBED BURNING STANDARDS. Requires that minimum standards established by the board for prescribed burning require that at least one certified and insured prescribed burn manager is present on site during the conduct of the prescribed burn, and include standards for notification to adjacent land owners, the TCEQ, rather than the TNRCC, and local fire authorities. Makes a conforming change.

SECTION 2.07. Amends Sections 153.048(c) and (e), Natural Resources Code, as follows:

(c) Provides that the certification is for two years, rather than five years.

(e) Makes a conforming change.

SECTION 2.08. Amends Sections 153.081(a) and (b), Natural Resources Code, to make conforming changes.

SECTION 2.09. Amends Section 153.082, Natural Resources Code, to make a conforming change.

SECTION 2.10. Amends Chapter 153, Natural Resources Code, by adding Subchapter D, as follows:

#### SUBCHAPTER D. COMPLAINTS, ENFORCEMENT, AND PENALTIES

Sec. 153.101. COMPLAINTS. Requires TDA to receive and process complaints concerning certified and insured prescribed burn managers in the manner described by Section 12.026 (Public Interest Information; Complaints), Agriculture Code, and rules adopted under that section.

Sec. 153.102. DISCIPLINARY ACTION; SCHEDULE OF SANCTIONS. (a) Authorizes TDA to impose an administrative sanction, including an administrative penalty, as provided by Sections 12.020 (Administrative Penalties), 12.0201( License Sanctions), 12.0202 (Administrative Hearings), and 12.0261 (Administrative Procedure), Agriculture Code, for violation of this chapter.

(b) Requires TDA by rule to adopt a schedule of the disciplinary sanctions that TDA may impose under this chapter. Requires TDA, in adopting the schedule of sanctions, to ensure that the severity of the sanction imposed is appropriate to the type of violation or conduct that is the basis for disciplinary action.

(c) Requires TDA, in determining the appropriate disciplinary action, including the amount of any administrative penalty to assess, to consider whether the person is being disciplined for multiple violations of either this chapter or a rule or order adopted under this chapter or has previously been the subject of disciplinary action by TDA under this chapter and has previously complied with TDA rules and this chapter; the seriousness of the violation, the threat to public safety, and any mitigating factors.

Sec. 153.103. INJUNCTION. (a) Authorizes TDA to apply to a district court in any county for an injunction to restrain a person who is not a certified and insured prescribed burn manager from representing that the person is a certified and insured prescribed burn manager.

(b) Requires the attorney general, at the request of TDA, to initiate and conduct an action in a district court in the state's name to obtain an injunction under this section.

Sec. 153.104. EMERGENCY SUSPENSION. (a) Authorizes TDA, on determining that a certification holder is engaged in or about to engage in a violation of this chapter and that the certification holder's continued practice constitutes an immediate threat to the public welfare, to issue an order suspending the certification holder's certification without notice or a hearing. Requires TDA to immediately serve notice of the suspension on the certification holder.

(b) Requires that the notice required by Subsection (a) be personally served on the certification holder or be sent by registered or certified mail, return receipt requested, to the certification holder's last known address according to TDA's records, state the grounds for the suspension, and inform the certification holder of the right to a hearing on the suspension order.

(c) Entitles a certification holder whose certification is suspended under this section to request a hearing on the suspension not later than the 30th day after the date of receipt of notice of the suspension. Requires TDA, not later than the fifth day after the date a hearing is requested, to issue a notice of hearing.

(d) Provides that a hearing on a suspension order under this section is subject to Chapter 2001 (Administrative Procedure), Government Code. Requires the administrative law judge, if the hearing is before an administrative law judge, after the hearing, to recommend to TDA whether to uphold, vacate, or modify the suspension order.

(e) Provides that a suspension order issued under this section remains in effect until further action is taken by TDA. Requires TDA, if the administrative law judge's recommendation under Subsection (d) is to vacate the order, to determine whether to vacate the order not later than the second day after the date of the recommendation.

SECTION 2.11. (a) Makes application of Section 153.048(c), Natural Resources Code, as amended by this Act, prospective.

(b) Makes application of Sections 153.102, 153.103, and 153.104, Natural Resources Code, as added by this Act, prospective.

### ARTICLE 3. TEXAS-ISRAEL EXCHANGE FUND BOARD

SECTION 3.01. Amends the heading to Chapter 45, Agriculture Code, to read as follows:

#### CHAPTER 45. TEXAS-ISRAEL EXCHANGE RESEARCH PROGRAM

SECTION 3.02. Amends Section 45.001, Agriculture Code, as follows:

Sec. 45.001. LEGISLATIVE FINDINGS; PURPOSE. (a) Provides that a program, rather than a fund, to support joint agricultural research and development by, and development of trade and business relations between, Texas and Israel, will address common problems and make substantial contributions to the development of agriculture, trade, and business in both areas.

(b) Makes a conforming change.

SECTION 3.03. Amends Section 45.002, Agriculture Code, to delete existing text defining "board" and "fund." Makes nonsubstantive changes.

SECTION 3.04. Amends Section 45.005, Agriculture Code, as follows:

Sec. 45.005. GENERAL FUNCTIONS, POWERS, AND DUTIES. (a) Authorizes TDA to establish a binational program to support joint agricultural research and development with Israel. Makes a conforming change.

(b) Makes a conforming change.

(c) Authorizes the program to undertake agricultural research and development projects of mutual benefit that are located in Texas, Israel, or any other location considered advisable by TDA or suggested by the advisory committee, rather than advisory boards. Make a conforming change.

(d) Authorizes TDA, rather than the fund, to make research or development grants or loans to public or private entities who intend to carry out the stated objectives of the program. Makes a conforming change.

(e) Makes a conforming change.

(f) Requires the program to encourage and support mutual cooperation, rather than a program of mutual cooperation, that will foster the development of trade, mutual assistance, and business relations between Texas and Israel.

SECTION 3.05. Amends Sections 45.007(b) and (d), Agriculture Code, as follows:

(b) Authorizes TDA, rather than the board, to accept gifts and grants from the federal government, state government, and private sources, as well as legislative appropriations to carry out the purposes of this chapter. Makes a conforming change.

(d) Requires TDA to make an annual accounting of all money received, awarded, and expended during the year under this chapter to the legislative committees responsible for agricultural issues.

SECTION 3.06. Amends Chapter 45, Agriculture Code, by adding Section 45.009, as follows:

Sec. 45.009. TEXAS-ISRAEL EXCHANGE ADVISORY COMMITTEE. Requires TDA to establish a binational agricultural research advisory committee to provide guidance and direction on activities conducted under this chapter and the expenditure of money appropriated for the purposes of this chapter.

SECTION 3.07. (a) Provides that the Texas-Israel Exchange Fund Board and the Texas-Israel Exchange Fund are abolished.

(b) Repealer: Section 45.003 (Creation of Fund), Agriculture Code.

Repealer: Section 45.004 (Administration), Agriculture Code.

Repealer: Section 45.006 (Texas-Israel Exchange Fund Board), Agriculture Code.

Repealers: Section 45.007(a) (relating to the original endowment of the fund) and (c) (relating to the deposit of all gifts and grants), Agriculture Code.

Repealer: Section 45.008 (Final Disbursement of Fund), Agriculture Code.

#### ARTICLE 4. STRUCTURE OF CERTAIN BOARDS AND ADVISORY COMMITTEES

SECTION 4.01. Amends Chapter 50B, Agriculture Code, by adding Section 50B.0015, to define "committee."

SECTION 4.02. Amends Section 50B.002, Agriculture Code, as follows:

Sec. 50B.002. New heading: WINE INDUSTRY DEVELOPMENT AND MARKETING ADVISORY COMMITTEE. (a) Requires, rather than authorizes, the commissioner, to appoint a wine industry development and marketing advisory committee (committee) to develop a long-term vision and marketable identity for the wine industry in the state that take into consideration future industry development, funding, research, educational programming, risk management, and marketing; and assist the commissioner in establishing and implementing the Texas Wine Marketing Assistance Program under Chapter 110 (Texas Wine Marketing Assistance Program in the Department of Agriculture), Alcoholic Beverage Code. Makes nonsubstantive changes.

(b) Provides that the committee consists of members appointed by the commissioner who represent a diverse cross-section of the wine industry, including representatives of certain groups and entities.

(c) Provides that the members of the committee serve without compensation.

(d) Provides that a member of the committee serves at the pleasure of the commissioner for a term of two years. Authorizes the commissioner to reappoint a member to the committee.

(e) Requires the commissioner to select a presiding officer from among the members and adopt rules governing the operation of the committee.

(f) Requires the committee to meet as necessary to provide guidance to the commissioner.

SECTION 4.03. Amends Sections 62.002(a) and (d), Agriculture Code, as follows:

(a) Provides that the State Seed and Plant Board (SSP board) is an agency of the state. Provides that the SSP board is composed of one individual, appointed by the president of Texas A&M University, from the Soils and Crop Sciences Department, Texas Agricultural Experiment Station, Texas A&M University; one individual, appointed by the president of Texas Tech University, from the Department of Plant and Soil Sciences, Texas Tech University; one individual, appointed by the commissioner, licensed as a Texas Foundation, Registered, or Certified seed or plant producer who is not employed by a public institution; one individual, appointed by the commissioner, who sells Texas Foundation, Registered or Certified seed or plants; one individual, appointed by the commissioner, actively engaged in farming but not a producer or seller of Texas Foundation, Registered or Certified seed or plants; and the head of the seed division of TDA, rather than composed of six members appointed by the governor with the advice and consent of the senate. Makes nonsubstantive changes.

(d) Requires the commissioner, rather than the governor, to designate a member of the SSP board as the chairman to serve in that capacity at the pleasure of the commissioner. Makes a conforming change.

SECTION 4.04. Amends Section 62.0027(a), Agriculture Code, to require the member, before a member of the board is authorized to assume the member's duties, rather than assume the member's duties and before the member is authorized to be confirmed by the senate, to complete at least one course of the training program established under this section.

SECTION 4.05. Amends Sections 103.003(a) and (f), Agriculture Code, as follows:

(a) Provides that the Produce Recovery Fund Board is composed of five members appointed by the commissioner, rather than by the governor with the advice and consent of the senate.

(f) Makes conforming changes.

SECTION 4.06. Amends Section 103.019(a), Agriculture Code, to make a conforming change.

SECTION 4.07. Amends Section 110.002(b), Alcoholic Beverage Code, to require the commissioner, in consultation with the advisory committee established under Section 50B.002, Agriculture Code, rather than Section 110.003, to adopt rules as necessary to implement this section.

SECTION 4.08. Repealer: Section 62.0023(c) (relating to notification by chairman to certain officials), Agriculture Code.

Repealers: Sections 103.003(b) (relating to each board member residing in a different senatorial district) and 103.017(c) (relating to notification by chairman to certain officials), Agriculture Code.

Repealer: Section 110.003 (Advisory Committee), Alcoholic Beverage Code.

SECTION 4.09. Provides that the Texas Wine Marketing Assistance program advisory committee and the wine industry development advisory committee are abolished on the effective date of this Act. Authorizes the commissioner to appoint a person who previously served on either of those committees to the wine industry development and marketing advisory committee established under Section 50B.002, Agriculture Code, as amended by this Act.

SECTION 4.10. Provides that the changes in law made by this Act by the amendment of Sections 62.002 and 103.003, Agriculture Code, do not effect the entitlement of a member serving on the SSP board or the Produce Recovery Board immediately before the effective date of this Act to continue to serve as a board member for the remainder of the member's term. Provides that the changes in law apply only to a member appointed on or after the effective date of this Act.

## ARTICLE 5. CERTAIN AGRICULTURAL REGULATORY PROGRAMS

SECTION 5.01. Amends Section 13.251, Agriculture Code, to redefine "public weigher."

SECTION 5.02. Amends Section 13.255, Agriculture Code, as follows:

Sec. 13.255. CERTIFICATE. (a) Prohibits a public weigher, rather than a public weigher whether elected or appointed, or a deputy public weigher, from officially weighing a commodity unless the weigher has obtained from TDA a certificate of authority.

(b) Requires a public weigher to submit a fee, as provided by TDA rule, with the application for a certificate of authority. Deletes existing text requiring a state public weigher to submit a nonrefundable fee, as provided by TDA rule, with the application for a certificate of authority and a county public weigher or deputy public weigher to submit a fee, as provided by TDA rule, with the application.

SECTION 5.03. Amends Section 13.2555, Agriculture Code, as follows:

Sec. 13.2555. REVOCATION, MODIFICATION, OR SUSPENSION OF CERTIFICATE. (a) Requires TDA to revoke, modify, or suspend the certificate of authority of a public weigher, rather than an appointed public weigher or a deputy of an appointed county public weigher, to assess an administrative penalty, place on probation the public weigher, rather than person, whose certificate has been suspended, or reprimand a public weigher for a violation of this subchapter or a rule adopted by TDA under this subchapter. Makes a conforming change.

(b) Authorizes TDA, if a certification suspension is probated, to require the public weigher, to perform certain duties. Makes conforming changes.

(c) Makes conforming changes.

SECTION 5.04. Amends Section 13.256, Agriculture Code, as follows:

Sec. 13.256. BOND. Deletes designation as Subsection (a). Requires each public weigher to execute a bond in accordance with rules adopted by TDA. Deletes existing text requiring each county public weigher, whether elected or appointed, and each deputy public weigher to execute for the full term of office a bond that is in the amount of \$2,500, approved by TDA and made payable to the county judge of the county for which the weigher is elected or appointed. Requires that the bond be conditioned on the accurate weight or measure of a commodity that the public weigher, rather than the public weigher or deputy, on the protection of a commodity that the public weigher is requested to weigh or measure, and on compliance with all laws and rules governing public weighers. Deletes existing text requiring that the bond be filed with the county clerk's office in the county for which the public weigher or deputy is appointed or elected. Deletes existing Subsection (b) and existing text requiring each state public weigher to execute a bond similar to the bond required under Subsection (a) of this section, except that the bond is for \$10,000, made payable to the State of Texas, and filed with TDA. Makes a conforming change.

SECTION 5.05. Amends Section 13.257(a), Agriculture Code, to require the public weigher, on each certificate of weight or measure that a public weigher, rather than a public weigher or deputy public weigher, issues, to include the signature and license number of the public weigher . Makes conforming changes.

SECTION 5.06. Amends Section 13.259(a), Agriculture Code, to make a conforming change.

SECTION 5.07. Amends Section 13.261, Agriculture Code, as follows:

Sec. 13.261. New heading: RULES. Requires, TDA to adopt rules governing the bond requirements and fees imposed by this subchapter, rather than authorizing TDA to adopt rules governing the procedures to be followed in administering the fees imposed under this subchapter.

SECTION 5.08. Amends Section 52.038, Agriculture Code, as follows:

Sec. 52.038. EXISTING CORPORATIONS AND ASSOCIATIONS. Deletes designation as Subsection (a). Deletes existing Subdivision (a)(3) and existing text authorizing any corporation or association organized under prior law before March 1, 1921, to elect, by a majority vote of its members or stockholders, to adopt this chapter and become subject to it by filing articles of incorporation in accordance with the requirements of Section 52.035 (Filing of Articles of Incorporation) of this code except that the entity's directors are required to sign the article. Deletes existing Subsection (b) and existing text providing that the filing fee for the articles filed under Subsection (a) of this section is equal to the filing fee for an amendment to the articles of incorporation as provided by Section 52.151 (Fees) of this code.

SECTION 5.09. Amends Section 52.151, Agriculture Code, as follows:

Sec. 52.151. New heading: TAX EXEMPTIONS. Deletes existing Subsection (a) and (b) and existing text providing that the fee for filing articles of incorporation under this chapter is \$10 and the fee for filing an amendment to the articles of incorporation under this chapter is \$2.50. Deletes designation of Subsection (c) and existing text requiring that each marketing association to pay to TDA an annual license fee, as provided by TDA rule. Makes a nonsubstantive change.

SECTION 5.10. Amends Section 101.003, Agriculture Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Provides that this section does not apply to a person who purchases perishable commodities and pays for the perishable commodities in United States currency before or at the time of delivery or taking possession. Makes nonsubstantive changes.

(c) Provides that a person who purchases perishable commodities without a license, as owner, agent, or otherwise, does not violate this section if the person obtains a license not later than the 30th day after the date the person first purchases perishable commodities.

SECTION 5.11. Amends Section 101.004, Agriculture Code, to delete designation of Subsections (a) and (b) and existing text requiring a person to register as a cash dealer if the person purchases perishable commodities and pays for the perishable commodities in United States currency before or at the time of delivery or taking possession.

SECTION 5.12. Amends Section 103.007(b) and (c), Agriculture Code, as follows:

(b) Prohibits TDA, if a previous license of the applicant, rather than if an applicant for a license indicates on the application that a previous license, has been or is suspended or has been revoked, from issuing or renewing a license to the applicant until TDA is furnished with satisfactory proof that the applicant is, on the date of application, qualified to receive the license for which the applicant applied as provided by TDA rule.

(c) Authorizes TDA to refuse to issue or renew, rather than issue, a license under this section if TDA determines that a license previously issued to the applicant was revoked or suspended or that the applicant has engaged in conduct for which a license could have been revoked or suspended. Makes a conforming change.

SECTION 5.13. Amends Section 101.009, Agriculture Code, to authorize TDA to publish as often as it considers necessary a list in pamphlet form or on TDA's Internet website, rather than a list in pamphlet form, of all persons licensed under this chapter.

SECTION 5.14. Amends Sections 101.013(a) and (b), Agriculture Code, as follows:

(a) Provides that if a licensee or a person required to be licensed, rather than a license, causes a producer, seller, or owner, or an agent of a producer, seller, or owner, to part with control or possession of all or any part of the person's perishable commodities and agrees by contract of purchase to pay the purchase price on demand following delivery, the licensee or person required to be licensed, rather than the license, shall make payment immediately on demand.

(b) Provides that if a person makes demand for the purchase price in writing, the mailing of a registered letter that makes the demand and is addressed to the licensee or person required to be licensed at their, rather than to the license at the licensee's, business address is prima facie evidence that demand was made at the time the letter was mailed.

SECTION 5.15. Amends Section 101.014, Agriculture Code, to make conforming changes.

SECTION 5.16. Amends Sections 101.015(a) and (b), Agriculture Code, to make conforming changes.

SECTION 5.17. Amends Section 101.0151, Agriculture Code, to make a conforming change.

SECTION 5.18. Amends Section 101.016, Agriculture Code, to authorize TDA to periodically investigate licensees, persons required to be licensed, or persons alleged to be selling or purchasing perishable commodities in violation of this chapter and, without notice, to require evidence of purchase of any perishable commodities in a person's possession or past possession. Makes conforming changes.

SECTION 5.19. Amends Section 101.017, Agriculture Code, to make conforming changes.

SECTION 5.20. Section 101.020(a), Agriculture Code, to provide that a person commits an offense if the person as a license holder or a person required to be licensed, fails to furnish information under Section 101.017 before the 11th day following the date of demand. Deletes existing text providing that a person commits an offense if the person as a cash dealer, pays for perishable commodities by a means other than United States Currency or acts or assumes to act as a cash dealer without first registering as a cash dealer. Makes conforming and nonsubstantive changes.

SECTION 5.21. Amends Section 103.002(a), Agriculture Code, to provide that the produce recovery fund is a special trust fund with the comptroller administered by TDA, without appropriation, for the payment of claims against license holders, retailers, and persons required to be licensed under Chapter 101. Makes a nonsubstantive change.

SECTION 5.22. Amends Section 103.005, Agriculture Code, as follows:

(a) Makes conforming changes.

(b) Requires a complaint and the fee under Subsection (a), rather than of this section, be filed on or before the second, rather than the first, anniversary of the date that payment was due, rather than date of the violation, or recovery from the fund is barred.

SECTION 5.23. Amends Section 103.0055, Agriculture Code, to make conforming changes.

SECTION 5.24. Amends Section 103.006(a), Agriculture Code, to make a conforming change.

SECTION 5.25. Amends Section 103.007(a), Agriculture Code, to make a conforming change.

SECTION 5.26. Amends Sections 103.008(a), (b), (d), and (f), Agriculture Code, as follows:

(a) Authorizes TDA, in making payments from the fund to pay the aggrieved party the full value of their validated claim, subject to Subsections (b) and (d), rather than all of the first \$2,000 of any claim and no more than 70 percent of the claim above \$2,000.

(b) Prohibits the total payment of all claims arising from the same contract with a license holder or a person required to be licensed from exceeding \$50,000, rather than \$35,000.

(d) Requires that payment of a claim filed against a person who is not licensed in violation of Chapter 101 be limited to 80 percent of the recovery prescribed under this section. Deletes existing text prohibiting TDA from paying a claim against a person who was not licensed on the date the contract on which the claim is based was entered into and a cash dealer registered under Chapter 101.

(f) Makes conforming changes.

SECTION 5.27. Amends Section 103.009, Agriculture Code, by amending Subsections(a), (c), and (d), and adding Subsection (e), as follows:

(a), (c), and (d) Makes conforming changes.

(e) Requires that the amount to be reimbursed under this section be one and one-half times the amount of the claim paid if the person required to reimburse TDA was not licensed on the date on which the transaction forming the base of the claim occurred.



SECTION 5.28. Amends Section 103.010, Agriculture Code, to make conforming changes.

SECTION 5.29. Amends Section 103.011(b), Agriculture Code, to provide that a person registered as a marketing association, rather than a cash dealer or a marketing association, organized under Chapter 52 that handles citrus fruit only for its members is exempt from payment of the fee under this section.

SECTION 5.30. Amends Sections 103.013(a) and (b), Agriculture Code, as follows:

(a) Provides that a person commits an offense if the person acts or assumes to act as a license holder under Chapter 101 without first paying the annual fee required by Section 103.11, rather than the fee required by this chapter.

(b) Provides that an offense under this section is a Class B misdemeanor, rather than a misdemeanor punishable by a fine of not more than \$500.

SECTION 5.31. Amends Section 121.005(a), Agriculture Code, to delete existing Subdivision (2) and existing text requiring each rose plant or shipment of rose plants be labeled with the number of the certificate of authority of the person selling or offering for sale the plant or shipment. Makes nonsubstantive changes.

SECTION 5.32. Amends Section 52.092(f), Election Code, to delete existing Subdivision (4) and existing text requiring that precinct offices be listed to include public weigher.

SECTION 5.33. Amends Section 172.024(a), Election Code, to make a conforming change.

SECTION 5.34. Amends Section 62.160(b), Labor Code, to delete existing text providing that Subchapter C does not apply to an agriculture employer with respect to an employee engaged in the production of livestock.

SECTION 5.35. Repealer: Section 13.252 (Appointment of Public Weighers), Agriculture Code.

Repealer: Section 13.253 (Election of Public Weighers), Agriculture Code.

Repealer: Section 13.2535 (Local Option Election to Abolish Office), Agriculture Code.

Repealer: Section 13.254 (Deputy Public Weighers), Agriculture Code.

Repealer: Section 52.035(b) (relating to requiring incorporators to file certified copies to TDA), Agriculture Code.

Repealer: Section 52.152 (Annual Report), Agriculture Code.

Repealer: Section 101.006(b) (relating to requiring TDA to charge a fee for registration), Agriculture Code.

Repealer: Section 103.008(c) (relating to a limit on total payment of claims), Agriculture Code.

Repealer: Section 121.004 (Certificate of Authority), Agriculture Code.

Repealer: Section 62.002(1) (relating to the definition of agricultural piece rate worker), Labor Code.

Repealer: Subchapter C (Agricultural Piece Rate Workers), Chapter 62 (Minimum Wage), Labor Code.

SECTION 5.36. (a) Provides that the changes in law made by this Act to Subchapter E, Chapter 13, Agricultural Code, do not affect the entitlement of a public weigher or deputy public weigher elected or appointed before the effective date of this Act to serve as a public weigher or deputy public weigher for the remainder of the public weigher's or deputy public weigher's term.

Provides that a public weigher or deputy public weigher elected or appointed before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(b) Makes application of Section 103.008, Agriculture Code, prospective.

## ARTICLE 6. GENERAL LICENSING PROVISIONS

SECTION 6.01. Amends Sections 12.020(a) and (c), Agriculture Code, as follows:

(a) Authorizes TDA, if a person violates a provision of law, rather than this code, described by Subsection (c), rather than Subsection (c) of this section, or a rule or order adopted by TDA under a provision of law described by Subsection (c), to assess an administrative penalty against the person as provided by this section. Makes conforming changes.

(c) Sets forth certain provisions of law, subject to this section and certain applicable penalty amounts that are increased or added, as follows:

Penalty increased from \$1,000 to not more than \$5,000: Chapter 41 (Commodity Producers Board).

Penalty increased from not more than \$500 to not more than \$5,000: Chapters 13 (Weights and Measures), 14A (Other Public Warehouse Operators), 18 (Certification and Agricultural Product Standards), 46 ("Go Texan" Partner Program), 61 (Inspection, Labeling, and Sale of Agricultural and Vegetable Seed), 94 (Citrus Fruit Maturity Standards), 95 (Citrus Fruit Coloring Matter), 101 (Handling and Marketing of Perishable Commodities), 102 (Handling and Marketing of Citrus Fruit), 103 (Produce Recovery Fund), 121 (Grading of Roses), 125 (Agricultural Hazard Communication Act), 132 (Eggs), and 134 (Regulation of Aquaculture).

Penalty increased from not more than \$2,000 to not more than \$5,000: Subchapter B (Inspection of Nursery Products and Florist Items), Chapter 71 (General Control), and Chapters 19 (Citrus Budwood Certification Program) and 76 (Pesticide and Herbicide Regulation).

Penalty of not more than \$5,000 added: Chapter 1951 (Structural Pest Control), Occupations Code.

Penalty of not more than \$5,000 added: Chapter 153 (Prescribed Burning), Natural Resources Code.

SECTION 6.02. Amends Section 12.023, to require, rather than authorize, TDA by rule to adopt a system under which registrations or licenses required by TDA, including licenses issued under Chapter 1951, Occupations Code, expire on various dates during the year. Authorizes TDA to increase or decrease the term of an initial or renewal license or registration so that all licenses held by a person or a group of license holders expire on the same date. Requires that for the period, rather than year, in which the registration or license expiration date is changed, registration or license fees be prorated on a monthly basis so that each registrant or licensee pays only that portion of the fee that is allocable to the number of months during which the registration or license is valid. Provides that on the next renewal of the registration or license, rather than on the new expiration date, the total renewal fee is payable.

SECTION 6.03. Amends Title 2, Agriculture Code, by adding Chapter 12A, as follows:

### CHAPTER 12A. GENERAL LICENSING PROVISIONS

#### SUBCHAPTER A. POWERS AND DUTIES OF DEPARTMENT RELATED TO LICENSING

Sec. 12A.001. **APPLICABILITY OF PROVISIONS.** Provides that the general licensing, regulatory, and enforcement provisions of Chapter 12 (Powers and Duties) and this chapter apply to licensing and regulatory programs administered by TDA under any law.

Sec.12A.002. **CEASE AND DESIST ORDER.** (a) Authorizes the commissioner, after notice and opportunity for a hearing, if it appears to the commissioner that a person who is not licensed by TDA is violating a statute or rule that requires the person to hold a license issued by TDA or a statute or rule relating to an activity regulated by TDA, to issue a cease and desist order prohibiting the person from engaging in the activity.

(b) Provides that a violation of an order under this section constitutes grounds for imposing an administrative penalty.

Sec. 12A.003. **RISK-BASED INSPECTIONS.** Provides that for each person licensed or regulated by TDA that TDA is authorized to inspect, TDA may:

(1) conduct additional inspections based on a schedule of risk-based inspections using certain criteria.

(2) waive any inspection requirement under law if an emergency arises or to accommodate complaint investigation or risk-based inspection schedules.

[Reserves Sections 12A.004-12A.050 for expansion.]

#### SUBCHAPTER B. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

Sec. 12A.051. **INFORMATION REGARDING COMPLAINTS AND ENFORCEMENT PROCESS.** (a) Requires TDA to inform applicants, license holders, and the public on TDA's Internet website, in TDA brochures, and on any other available information resource about TDA's enforcement process, including each step in the complaint investigation and resolution process, from initial filing through final appeal, and the opportunity to request an informal settlement conference; and inform license holders that a license holder may obtain information about a complaint made against the license holder and may obtain a copy on request of the complaint file.

(b) Requires TDA except as provided by Subsection (d), to provide to a license holder against whom a complaint has been filed the allegations made against the license holder in the complaint and, on the license holder's request, any information obtained by TDA in its investigation of the complaint.

(c) Requires TDA to provide the information required under Subsection (b) in a timely manner to allow the license holder time to respond to the complaint.

(d) Provides that TDA is not required to provide the following information to a license holder: the name of a confidential informant whose testimony will not be used in any hearing as evidence against the license holder; attorney-client communications; attorney work product; or any other information that is confidential or not subject to disclosure under law, rule of evidence, or rule of civil procedure.

Sec. 12A.052. **COMPLAINT AND VIOLATION ANALYSIS.** Requires TDA to analyze complaints filed with the violations discovered by TDA to identify any trends or issues related to certain violations, including the reason for each complaint or violation; how each complaint or violation was resolved; and the subject matter of each complaint or violation that was not within the jurisdiction of TDA and how TDA responded to the complaint or violation.

[Reserves Sections 12A.053-12A.100 for expansion.]

## SUBCHAPTER C. ISSUANCE AND RENEWAL OF LICENSES

Sec. 12A.101. REPLACEMENT LICENSE; FEE. Requires TDA to issue to a license holder whose license has been lost or destroyed or whose name has been changed a replacement license if the license holder submits to TDA an appropriate application and a fee in the amount established by TDA rule.

[Reserves Sections 12A.102-12A.150 for expansion]

## SUBCHAPTER D. EXAMINATIONS

Sec. 12A.151. EXAMINATION PROCEDURES. Requires TDA , for each licensing examination administered by TDA, to adopt policies and guidelines detailing the procedures for the testing process, including test admission and internal test administration procedures, and post on TDA's Internet website the policies that reference the testing procedures.

Sec. 12A.152. EVALUATION OF EXAMINATION QUESTIONS. Requires TDA, for each licensing examination administered by TDA, to periodically evaluate the effectiveness of examination questions in objectively assessing an applicant's knowledge.

[Reserves Sections 12A.153-12A.200 for expansion.]

## SUBCHAPTER E. PENALTIES AND ENFORCEMENT PROCEDURES

Sec. 12A.201. INFORMAL PROCEEDINGS. (a) Requires TDA by rule to adopt procedures governing informal disposition of a contested case under Section 2001.056 (Informal Disposition of Contested Case), Government Code, and an informal proceeding held in compliance with Section 2001.054 (Licenses), Government Code.

(b) Requires TDA to offer the opportunity to conduct an informal settlement conference by telephone.

(c) Requires TDA to:

(1) provide a license holder sufficient opportunity to indicate whether the terms of a proposed order are acceptable to the license holder;

(2) indicate in the notice of violation that the license holder has the opportunity described by Subdivision (1); and

(3) allow a license holder who does not agree with a proposed order to request an informal settlement conference.

SECTION 6.04. Amends the heading to Section 76.113, Agriculture Code, to read as follows:

Sec. 76.113. TERM AND RENEWAL OF LICENSES.

SECTION 6.05. Amends Section 76.113(a), Agriculture Code, as follows:

(a) Provides that each pesticide, rather than commercial applicator or noncommercial, applicator license issued under this chapter, other than a private applicator license, expires at the end of the license period established by department rule, rather than expires on the first anniversary of the date on which it was issued or renewed.

(b) Provides that each private applicator license is valid for five years, rather than expires on the fifth anniversary of the date on which it was issued or renewed.

SECTION 6.06. Amends Section 76.151, Agriculture Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Authorizes TDA, at any time and without notice during regular business hours to enter and inspect a building or place owned, controlled, or operated by a person engaged in an activity regulated under this chapter or Chapter 1951 (Structural Pest Control), Occupations Code, and inspect and review any record maintained by a person engaged in any activity regulated under this chapter or Chapter 1951, Occupations Code, rather than entitling TDA, for the purposes of inspection, examination, or sampling to enter at reasonable hours any building or place owned, controlled, or operated by a registrant or dealer if from probable cause it appears that the building or place contains a pesticide.

(a-1) Authorizes TDA to enter and inspect a building or a place or inspect and review any record under Subsection (a) as necessary to ensure compliance with this chapter or Chapter 1951, Occupations Code, or investigate a complaint made to TDA.

SECTION 6.07. Amends Section 76.1555(a), Agriculture Code, to authorize TDA, if a person violates a provision of this chapter or Chapter 1951, Occupations Code, or a rule or order adopted by TDA under this chapter or Chapter 1951, Occupations Code, to assess an administrative penalty against the person as provided by Section 12.020, except that the penalty for each violation is authorized not to exceed \$5,000, rather than required not to exceed \$4,000 for all violations related to a single incident. Provides that each day a violation continues or occurs may be considered a separate violation for purposes of penalty assessment.

SECTION 6.08. Amends Section 132.024, Agriculture Code, as follows:

Sec. 132.024. New heading: LICENSE TERM. Provides that a license issued or renewed under this chapter is valid for one year, rather than expires on the first anniversary of the date of issuance or renewal.

SECTION 6.09. Makes application of Sections 12.020(c) and 76.1555(a), Agriculture Code, as amended by this Act, prospective.

## ARTICLE 7. STRUCTURAL PEST CONTROL

SECTION 7.01. Amends Section 12.0201, Agriculture Code, to authorize TDA, in addition to other sanctions provided by law, to revoke, modify, suspend, or refuse to issue or renew a license, assess an administrative penalty, place on probation a person whose license has been suspended, or reprimand a license holder if TDA finds that the practitioner violated a provision of this code or Chapter 1951, Occupations Code. Makes conforming changes.

SECTION 7.02. Amends Subchapter A, Chapter 1951, Occupations Code, by adding Section 1951.007, as follows:

Sec. 1951.007. APPLICABILITY OF AGRICULTURE CODE LICENSING PROVISIONS. Provides that a provision of the Agriculture Code that applies generally to licensing or regulatory programs administered by TDA, including a provision that refers generally to licensing or regulatory programs under the Agriculture Code, applies to this chapter.

SECTION 7.03. Amends Section 1951.053(a), Occupations Code, to delete existing text providing that except as provided by Sections 1951.212 and 1951.457(c), this chapter does not apply to a person who performs pest control work on growing plants, trees, shrubs, grass, or other horticultural plants if the person holds a florist or nursery registration certificate from TDA under Section 71.043, Agriculture Code, other than a registration certificate that permits the sale, lease, or distribution of nursery products or floral items only at a temporary market. Makes a nonsubstantive change.

SECTION 7.04. Amends Section 1951.207(a), Occupations Code, to delete existing text requiring TDA to by rule adopt a policy that provides for additional inspections based on a schedule of risk-based inspections using certain criteria and provides that TDA is authorized to waive the inspection requirement on a case-by-case basis if an emergency arises or to accommodate complaint investigation schedules. Makes nonsubstantive changes.

SECTION 7.05. Reenacts Section 1951.254(f), Occupations Code, as amended by Chapters 885 (H.B. 2278) and 890 (H.B. 2458), Acts of the 80th Legislature, Regular Session, 2007, to set forth certain information the information sheet must include.

SECTION 7.06. Amends Section 1951.306(a), Occupations Code, to authorize TDA to enter into reciprocal licensing agreements with other states that have license requirements substantially equivalent to those of this state.

SECTION 7.07. Repealer: Section 1951.202 (Bylaws), Occupations Code.

Repealer: Section 1951.310 (Late Renewal of License), Occupations Code.

Repealer: Section 1951.311 (Replacement License; Fee), Occupations Code.

Repealers: Sections 1951.501(c) (relating to certain actions by the commissioner) and (d) (relating to certain requirements by the commissioner for a person whose license suspension is probated), Occupations Code.

Repealer: Subchapter L (Administrative Penalty), Chapter 1951, Occupations Code.

Repealer: Section 1951.604 (Cease and Desist Order), Occupations Code.

Repealer: Section 1951.605 (Stop Use Order), Occupations Code.

SECTION 7.08. Makes application of the repeal of Sections 1951.501(c) and (d), Occupations Code, prospective. Provides that a violation committed on or after the effective date of this Act is governed by Section 12.0201, Agriculture Code, as amended by this Act, and other applicable law.

SECTION 7.09. Makes application of the repeal of Section 1951.310, Occupations Code, prospective. Provides that an application submitted on or after the effective date of this Act is governed by Section 12.024, Agriculture Code, and other applicable law.

SECTION 7.10. Makes application of the repeal of Section 1951.311, Occupations Code, prospective. Provides that an application submitted on or after the effective date of this Act is governed by Section 12A.101, Agriculture Code, as added by this Act, and other applicable law.

SECTION 7.11. Makes application of the repeal of Subchapter L, Chapter 1951, Occupations Code, prospective. Provides that a violation committed on or after the effective date of this Act is governed by Section 12.020, Agriculture Code, as amended by this Act, and other applicable law.

## ARTICLE 8. SUNSET DATE AND ACROSS-THE-BOARD RECOMMENDATIONS

SECTION 8.01. Amends Section 11.003, Agriculture Code, to provide that TDA is subject to Chapter 325 (Texas Sunset Act), Government Code. Provides that unless continued in existence as provided by that chapter, TDA is abolished September 1, 2021, rather than 2009.

SECTION 8.02. Amends Section 12.0135, Agriculture Code, as follows:

Sec. 12.0135. CONFLICT PROVISIONS. (a) Prohibits a person from being a TDA employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if the person is an officer, employee, or paid consultant of a Texas trade association in the field of agriculture or the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of agriculture.

(b) Creates Subsection (b) from existing text. Prohibits a person from acting as the general counsel to the commissioner or TDA if the person is required to register as a lobbyist under Chapter 305 (Registration of Lobbyists), Government

Code. Deletes existing Subsections (b) and (c) and existing text prohibiting an officer, employee, or paid consultant of a statewide Texas trade association or an affiliate of a national trade association in the field of agriculture from being an employee of TDA who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule and prohibiting a person who is a spouse of an officer, manager, or paid consultant of a statewide Texas trade association or an affiliate of a national trade association in the field of agriculture from being an employee of TDA who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule. Redesignates Subsection (d) as Subsection (c).

(c) Redesignated from Subsection (d). Redefines "Texas trade association."

SECTION 8.03. Amends Chapter 12, Agriculture Code, by adding Section 12.0203, as follows:

Sec. 12.0203. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION. (a) Requires the commissioner to develop and implement a policy to encourage the use of certain negotiated rulemaking and alternative dispute resolution procedures.

(b) Requires that TDA's procedures relating to alternative dispute resolution conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) Requires the commissioner to designate a trained person to coordinate the implementation of the policy adopted under Subsection (a); serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and collect data concerning the effectiveness of those procedures, as implemented by TDA.

SECTION 8.04. Amends Chapter 12, Agriculture Code, by adding Section 12.047, as follows:

Sec. 12.047. USE OF TECHNOLOGY. Requires the commissioner to implement a policy requiring TDA to use appropriate technological solutions to improve TDA's ability to perform its functions. Requires that the policy ensure that the public is able to interact with TDA on the Internet.

## ARTICLE 9. ADDITIONAL PROVISIONS

SECTION 9.01. Amends Section 12.022, Agriculture Code, as follows:

Sec. 12.022. New heading: AUTHORITY TO SOLICIT AND ACCEPT GIFTS, GRANTS, AND DONATIONS. Authorizes TDA to solicit and accept, rather than provides that TDA is authorized to accept gifts, grants, and donations of money, services, or property from any person. Provides that money received by TDA under this section may be expended or distributed for any public purpose related to TDA's duties. Deletes existing text requiring TDA to file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all gifts, grants, and donations received and disbursed, used, or maintained by TDA during the preceding fiscal year and requiring that the report be included in the annual report required by Section 12.014 of this chapter.

SECTION 9.02. Amends Chapter 12, Agriculture Code, by adding Section 12.046, as follows:

Sec. 12.046. TEXAS RURAL INVESTMENT FUND. (a) Defines "fund" and "rural community."

(b) Provides that the fund is a dedicated account in the general revenue fund and consists of appropriations of money to the fund by the legislature; gifts, grants, including federal grants, and other donations received for the fund; and interest earned on the investment of money in the fund.

(c) Authorizes TDA to use the fund only to pay for grants or loans to public or private entities for projects in rural communities that have strong local support, provide positive return on the state's investment, and stimulate local entrepreneurship, job creation or retention, new capital investment, strategic economic development planning, individual economic and community development leadership training, housing development, or innovative workforce education; and to administer the grant and loan program under this section.

(d) Requires TDA, in awarding a grant or loan of money from the fund for a project, to consider the project's effect on job creation and wages; the financial strength of the applicant; the applicant's business history; an analysis of the relevant business sector; whether there is public or private sector financial support for the project; and whether there is local support for the project.

(e) Provides that the fund is exempt from the application of Sections 403.095 and 404.071, Government Code.

(f) Authorizes TDA to accept grants, gifts, or donations from any source that are made for the purposes of this section. Requires that money received under this subsection be deposited in the fund.

(g) Requires TDA to adopt rules to administer this section.

SECTION 9.03. Amends Section 19.012(a), Agriculture Code, to provide that a person commits an offense if the person uses citrus budwood that is not certified, or does not come from a designated foundation grove, for commercial purposes that require certification under TDA rule. Makes nonsubstantive changes.

SECTION 9.04. Amends Section 19.014, Agriculture Code, to authorize TDA to assess an administrative penalty under Chapter 12 for a violation of this chapter if TDA finds that a person uses citrus budwood that is not certified, or does not come from a designated foundation grove, for commercial purposes that require certification under TDA rule. Makes nonsubstantive changes.

SECTION 9.05. Amends Section 41.151, Agriculture Code, to delete existing text defining "board." Makes nonsubstantive changes.

SECTION 9.06. Amends Section 41.152(b), Agriculture Code, to require the Texas Beef Council (council) to be the certified organization, rather than recognized as the entity, to plan, implement, and operate research, education, promotion, and marketing programs under this subchapter. Provides that the council is the state beef council qualified to collect the proceeds of and administer in this state the beef check off program established by federal law.

SECTION 9.07. Amends Section 41.156, Agriculture Code, as follows:

Sec. 41.156. New heading: COUNCIL MEMBERS. (a) Provides that the council, rather than board, is composed of 20, rather than 21, members appointed by the commissioner including two representatives of the Independent Cattlemen's Association of Texas and one representative, rather than two, of the Livestock Marketing Association of Texas.

(b) Provides that a council, rather than board, member serves a one-year term or until his or her successor is appointed. Prohibits a council member from serving more than six consecutive one-year terms. Authorizes members of the council to nominate persons for appointment to vacancies created by expiring or expired terms.



(c) Requires the commissioner, on recommendation of the council, to fill a vacancy on the council, rather than board, by appointment for the unexpired term.

SECTION 9.08. Amends Section 41.157, Agriculture Code, to authorize the council to take action or exercise other authority as necessary to execute any act authorized by this chapter, rather than subchapter, or the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., V.T.C.S.).

SECTION 9.09. Amends Sections 41.160(b), (c), and (e), Agriculture Code, as follows:

(b) Requires the council, if an assessment referendum is approved, to recommend to the commissioner an assessment amount not greater than the maximum amount approved in the referendum. Requires the council, after the assessment is approved by the commissioner, to collect the assessment.

(c) Requires, rather than authorizes, an assessment levied on producers to be applied by the council to efforts relating to the marketing, education, research, and promotion of beef and beef products in Texas, the United States, and international markets, including administrative costs of conducting an assessment referendum.

(e) Authorizes the commissioner, on the council's recommendation, to exempt from the assessment certain producers who are exempt under federal law.

SECTION 9.10. Amends Section 41.161(a), Agriculture Code, to require the commissioner to annually review and approve the council's operating budget for the funds collected under this subchapter.

SECTION 9.11. Amends Section 41.162(g), Agriculture Code, to require the council to pay all expenses incurred in conducting a referendum with funds collected from the beef industry.

SECTION 9.12. Amends Section 71.004(d), Agriculture Code, to require that an emergency quarantine be established in accordance with the provisions related to emergency rulemaking in Chapter 2001, Government Code, rather than expire 30 days following the date on which it was established unless reestablished following notice and hearing as provided by this subchapter.

SECTION 9.13. Amends Section 72.002(b), Agriculture Code, to authorizes TDA to adopt rules, rather than to adopt rules to be proclaimed by the governor, as necessary for the administration of this chapter.

SECTION 9.14. Amends Sections 72.011(a) and (b), Agriculture Code, as follows:

(a) Requires TDA, rather than the governor, when advised of the existence of Mexican fruit fly within a county or part of a county in this state, to certify that fact and proclaim the county or part of a county quarantined under this chapter.

(b) Authorizes TDA, if TDA determines that the exigencies of the situation require a modified quarantine, to designate a modified quarantined area, rather than to designate a modified quarantined area to be certified to the governor for proclamation.

SECTION 9.15. Amends Section 72.012, Agriculture Code, to provide that the premises of each individual, whether an owner, lessee, renter, tenant, or occupant, within the area named in the quarantine, rather than the quarantine proclamation, are subject to the quarantine, even though not specifically named.

SECTION 9.16. Amends Section 72.015(a), Agriculture Code, to prohibit a person from hauling, trucking, or otherwise moving citrus fruit from any premises or area that is under quarantine for Mexican fruit fly infestation by this chapter or by order of TDA, rather than by order of TDA or by proclamation of the governor, in violation of the quarantine without a written permit or certificate issued by TDA or an inspector of the Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, United States Department of Agriculture.

SECTION 9.17. Amends Section 76.004(a), Agriculture Code, to delete existing text requiring TDA, except as provided by Subchapter G, after notice, to conduct at least five regional hearings throughout the state before the adoption of any rule for carrying out the provisions of this chapter.

SECTION 9.18. Repealer: Section 12.017 (Use of the Term "Texas Agricultural Product"), Section 72.003 (Peace Officer Power), Section 72.011(c) (relating to the governor's proclamation of a quarantine), and Section 76.005 (Notice of Hearing), Agriculture Code.

SECTION 9.19. (a) Provides that the change in law made by this Act to Section 19.012, Agriculture Code, applies only to an offense committed on or after the effective date of this Act. Provides that an offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. Provides that for purposes of this subsection, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

(b) Provides that the change in law made by this Act to Section 19.014, Agriculture Code, applies only to conduct that occurred on or after the effective date of this Act. Provides that conduct that occurred before the effective date of this Act is governed by the law in effect when the conduct occurred, and the former law is continued in effect for that purpose.

(c) Provides that the change in law made by this Act to Section 41.156, Agriculture Code, does not affect the entitlement of a member of the board of directors of the Texas Beef Council to serve for the remainder of the member's term. Provides that a board member appointed before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(d) Provides that the change in law made by this Act to Section 41.160, Agriculture Code, applies only to an assessment approved on or after the effective date of this Act. Provides that an assessment approved before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(e) Provides that the change in law made by this Act to Section 41.162, Agriculture Code, applies only to an assessment referendum conducted on or after the effective date of this Act. Provides that an assessment referendum conducted before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(f) Provides that the changes in law made by this Act by the amendment of Section 76.004, Agriculture Code, and the repeal of Section 76.005, Agriculture Code, apply only to a public hearing held on or after the effective date of this Act. Provides that a public hearing held before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

## ARTICLE 10. EFFECTIVE DATE

SECTION 10.01. Effective date: September 1, 2009.