

AGRICULTURE CODE

TITLE 5. PRODUCTION, PROCESSING, AND SALE OF HORTICULTURAL PRODUCTS

SUBTITLE B. HORTICULTURAL DISEASES AND PESTS

CHAPTER 74. COTTON DISEASES AND PESTS

SUBCHAPTER A. COTTON PEST CONTROL

Sec. 74.001. PUBLIC NUISANCE. (a) The legislature finds that cotton pests are a menace to the cotton industry, and that control of those pests is a public necessity. Any portion of the state that is susceptible to infestation by cotton pests must be protected from this public nuisance and threat to the continued stability of the cotton industry.

(b) The legislature finds that volunteer and other noncommercial cotton is a public nuisance that threatens the cotton growers' boll weevil eradication program by serving as a host for cotton pests such as boll weevils and pink bollworms. To protect the cotton industry of this state, volunteer and other noncommercial cotton must be eliminated subject to the provisions of this chapter.

Acts 1981, 67th Leg., p. 1173, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1987, 70th Leg., ch. 691, Sec. 1, eff. Sept. 1, 1987; Acts 1995, 74th Leg., ch. 957, Sec. 1, eff. June 16, 1995.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 178 (H.B. [1580](#)), Sec. 1, eff. May 27, 2009.

Sec. 74.002. DEFINITIONS. In this subchapter:

(1) "Cotton" includes the cotton plant, cotton in the boll, cotton stalk, and all cotton products, including seed cotton, cottonseed, and cotton hulls, but not including cotton oil or cotton meal.

(2) "Cotton pest" includes the boll weevil and the pink bollworm.

(3) "Host plant" means a plant susceptible to infestation by the boll weevil, pink bollworm, or any other cotton pest.

(4) "Boll weevil" means the insect *Anthonomus grandis* Boheman, in any stage of development, including the egg, larval, pupal, and adult stages.

(5) "Okra" includes okra stalks.

(6) "Pest management zone" means a geographical zone established by the department under this chapter for purposes of cotton pest control and prevention.

(7) "Pink bollworm" means the insect *Pectinophora gossypiella*, Saunders, in any stage of development, including the egg, larval, pupal, and adult stages.

Amended by Acts 1987, 70th Leg., ch. 691, Sec. 1, eff. Sept. 1, 1987; Acts 1995, 74th Leg., ch. 957, Sec. 2, eff. June 16, 1995.

Sec. 74.003. ESTABLISHMENT OF PEST MANAGEMENT ZONES. (a) Any producer organization authorized under the laws of this state or recognized under department rules and representing cotton producers may petition the commissioner for certification to establish a pest management zone. A pest management zone may include all or part of one or more counties.

(b) Within 15 days following the day on which a petition for certification is received, the commissioner shall determine whether or not to grant certification.

(c) If the commissioner determines that, on the basis of information submitted, the petitioning organization is representative of cotton producers within the boundaries described in the petition and that the petition conforms to the purposes and provisions of this subchapter, the commissioner shall certify that the organization is representative of the producers of the commodity within the described area and is authorized to establish a pest management zone.

(d) Repealed by Acts 2021, 87th Leg., R.S., Ch. 848 (S.B. 703), Sec. 56(6), eff. September 1, 2021.

Amended by Acts 1987, 70th Leg., ch. 691, Sec. 1, eff. Sept. 1, 1987; Acts 1995, 74th Leg., ch. 957, Sec. 3, eff. June 16, 1995.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 848 (S.B. 703), Sec. 56(6), eff. September 1, 2021.

Sec. 74.0031. COTTON STALK DESTRUCTION. (a) Repealed by Acts 2021, 87th Leg., R.S., Ch. 848 (S.B. 703), Sec. 56(6), eff. September 1, 2021.

(b) The Texas Boll Weevil Eradication Foundation shall:

(1) conduct a study of the effects of incomplete cotton stalk destruction and volunteer cotton control on boll weevil eradication activities; and

(2) submit annual recommendations to the department and the board of the foundation for a cotton stalk destruction deadline for each pest management zone.

(c) The Texas Boll Weevil Eradication Foundation may consult with its technical advisory committee in fulfilling its duties under Subsection (b).

(d) The department shall set a cotton stalk destruction deadline for each pest management zone, with consideration given to the recommendations of the foundation.

Added by Acts 2009, 81st Leg., R.S., Ch. 178 (H.B. 1580), Sec. 2, eff. May 27, 2009.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 848 (S.B. 703), Sec. 19, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 848 (S.B. 703), Sec. 56(6), eff. September 1, 2021.

Sec. 74.0032. HOSTABLE COTTON FEE. (a) The department shall establish and collect a hostable cotton fee for fields in which hostable cotton stalks, hostable volunteer cotton, or other hostable noncommercial cotton remains past the stalk destruction deadline set for the applicable pest management zone under Section 74.0031. A fee under this section shall be expressed in terms of dollars per acre, per week in which the stalks, volunteer cotton, or other noncommercial cotton remains in the field. The department shall establish a procedure to notify a cotton grower that a fee is due the department under this section.

(b) If adverse weather conditions or other good cause exists, the Texas Boll Weevil Eradication Foundation may request

that the department grant an extension of the cotton stalk destruction deadline for any specified part of the pest management zone or for the entire pest management zone. A request under this subsection must be made within the period specified by department rule. A field is not subject to a hostable cotton fee if the department grants an extension of the deadline. The Texas Boll Weevil Eradication Foundation shall submit to the department an estimate of the amount by which an extension under this subsection will increase the cost of administering the boll weevil eradication program.

(c) If the Texas Boll Weevil Eradication Foundation does not request an extension, or if the department denies a request for an extension of the cotton stalk destruction deadline for a specified part of a pest management zone, a cotton grower may apply for an individual extension of the deadline. A request under this subsection must be made within the period specified by department rule.

(d) The Texas Boll Weevil Eradication Foundation shall submit to the department an estimate of the amount by which any extension of a stalk destruction deadline that is granted under Subsection (c) will increase the cost of administering the boll weevil eradication program.

(e) Any hostable cotton or hostable cotton stalks that remain in a field after the cotton stalk destruction deadline or any extension of the stalk destruction deadline has passed are subject to the hostable cotton fee established under Subsection (a). Any hostable cotton or hostable cotton stalks that remain in a field for more than 30 days after the stalk destruction deadline or any extension of the deadline are subject to 150 percent of the hostable cotton fee established under Subsection (a).

(f) A hostable cotton fee shall be sent to the comptroller and may be appropriated only for the purpose of treating hostable cotton or for other expenses related to boll weevil eradication. The department may contract with the Texas Boll Weevil Eradication Foundation or its successor entity for the treatment, control, or monitoring activities funded from the account.

(g) Unless the fee is paid on or before the 45th day after the date the department gives notice to a cotton grower that a hostable cotton fee is due, the department may destroy any cotton or cotton stalks that remain in the field, as provided by Section [74.004](#).

(h) The department shall adopt rules to administer this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 178 (H.B. [1580](#)), Sec. 2, eff. May 27, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 83 (S.B. [378](#)), Sec. 1, eff. September 1, 2011.

Acts 2021, 87th Leg., R.S., Ch. 848 (S.B. [703](#)), Sec. 20, eff. September 1, 2021.

Sec. 74.004. DESTRUCTION OF HOST PLANTS. (a) The department may establish regulated areas, dates, and appropriate methods of destruction of stalks, other parts, and products of host plants for cotton pests, including requirements for destruction of foliage, fruiting structures, and root systems of host plants after the harvest deadline.

(b) If on inspection of a field after the harvest deadline, the department determines that host plants or any parts or products of host plants have not been destroyed within the time specified by regulation of the department, the department may declare the field to be a public nuisance.

(c) On the declaration of a field as a public nuisance, the department may take any action necessary to complete destruction of host plants or host plant products or parts to prevent the spread of cotton pests from the infested area and shall:

(1) immediately give written notice to any farm owner and to the operator in charge of the field that the field is in violation of this section, instructing the owner and operator to destroy host plants or host plant products or parts within seven days after the date written notice is issued;

(2) post for a period of three consecutive days a copy of the notice on or in the immediate vicinity of the field in

violation, if either the owner or operator of the field cannot be located after a reasonably diligent effort by the department; and

(3) have the host plants or host plant products or parts destroyed, if no response is received by the department from either the owner or operator within four days after the date of posting of the notice at the field or if the department considers a response inadequate.

(d) If adverse weather conditions or other good cause exists, the commissioner may, on written request by a farm owner or operator, grant an extension of the date of implementation of appropriate host plant or host plant product or part destruction.

(e) If it becomes necessary for the department to contract with someone to destroy host plants or host plant products or parts, the farm owner or operator shall reimburse the department for 1-1/2 times the actual costs required for destruction.

(f) If neither the farm owner nor operator reimburses the department as provided by Subsection (e) of this section within 30 days after the date of the completion of department action and issuance by the department of a bill requesting payment, the department may place a lien against the property on which a violation of a department regulation under this section has occurred.

(g) The department may perfect the lien by filing the lien, a sworn statement of the indebtedness, and a description of the property subject to the lien with the county clerk of the county in which the property is located. The lien must be filed within a 30-day period following the expiration of the 30-day period described in Subsection (f) of this section. Within 180 days after the date of filing the lien, the department may file suit in a court of competent jurisdiction for collection of the account and foreclosure of the lien. Neither the department nor any person to whom the account is assigned may be required to post a cost bond in the suit. The court shall enter judgment for the debt with interest and costs of suit and foreclosing the lien on premises as the court determines necessary for the defraying of expenses, court costs, and the fees owed.

(h) All reimbursements and additional costs collected under

this section shall be deposited in the State Treasury in a special fund to be appropriated to the department to carry out this subchapter.

(i) Reimbursement under Subsection (e) of this section does not prevent the department from seeking criminal or civil sanctions under this subchapter.

(j) In this section, "harvest deadline" means a deadline set by the department for harvesting a certain crop or, in the absence of a department deadline, the 31st day after the date by which the crop is customarily harvested in the region, as determined by the department.

Amended by Acts 1987, 70th Leg., ch. 691, Sec. 1, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 230, Sec. 71, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 847, Sec. 1, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 957, Sec. 4, eff. June 16, 1995.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 848 (S.B. 703), Sec. 21, eff. September 1, 2021.

Sec. 74.0041. REGULATION OF PLANTING DATES. The department may establish uniform planting dates for host plants.

Added by Acts 1993, 73rd Leg., ch. 847, Sec. 2, eff. Aug. 30, 1993.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 848 (S.B. 703), Sec. 22, eff. September 1, 2021.

Sec. 74.005. ENTRY POWER; INSPECTIONS. For the purpose of enforcing this chapter, the department is entitled to:

(1) enter any field of host plants or any premises in which a host plant or its product is stored or held;

(2) examine any product, container, or substance susceptible to cotton pest infestation; and

(3) examine the records of a purchaser, handler, or common carrier of host plant products.

Added by Acts 1987, 70th Leg., ch. 691, Sec. 1, eff. Sept. 1, 1987.

Amended by Acts 1995, 74th Leg., ch. 957, Sec. 5, eff. June 16, 1995.

Sec. 74.006. RULES. The department may adopt rules as are necessary for the efficient enforcement and administration of this subchapter.

Amended by Acts 1987, 70th Leg., ch. 691, Sec. 1, eff. Sept. 1, 1987.

Sec. 74.007. OFFENSES; PENALTY. (a) A person commits an offense if the person:

(1) violates a proclamation or a rule or restriction adopted under this subchapter;

(2) brings into this state any equipment or material contaminated with cotton pests; or

(3) fails to comply with a rule adopted for the control and direction of host plant growing.

(b) An offense under this section is a Class B misdemeanor. Amended by Acts 1987, 70th Leg., ch. 691, Sec. 1, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 230, Sec. 72, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 957, Sec. 6, eff. June 16, 1995.

Sec. 74.008. CIVIL PENALTY; INJUNCTION. (a) A person who violates this subchapter or a rule adopted under this subchapter is liable to the state for a civil penalty of not less than \$250 nor more than \$10,000 for each violation. Each day a violation continues may be considered a separate violation for purposes of a civil penalty assessment.

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

(c) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall be equally divided between the State of Texas and the local government or governments with 50 percent of the recovery to be paid to the General Revenue Fund and the other 50 percent equally to the local

government or governments first instituting the suit.

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

Added by Acts 1989, 71st Leg., ch. 230, Sec. 73, eff. Sept. 1, 1989.

Sec. 74.009. COTTON PEST CONTROL AND ERADICATION POLICY. The state shall employ all constitutional methods to control and eradicate cotton pests that scientific research demonstrates to be successful, including:

(1) inspection of host plants in the field or host plant products where stored;

(2) quarantine and fumigation of equipment, host plants, and host plant products found to be contaminated;

(3) supervision of the growing of host plants in areas known to be contaminated;

(4) destruction of infested fields of host plants or of infested host plant products;

(5) prevention of planting of host plants in areas where infestation has been found; and

(6) prevention of movement of equipment contaminated or reasonably suspected to be contaminated with cotton pests.

Acts 1981, 67th Leg., p. 1175, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Renumbered from Sec. 74.052 and amended by Acts 1995, 74th Leg., ch. 957, Sec. 7, eff. June 16, 1995.

Sec. 74.010. REGULATION OF COTTON PESTS; QUARANTINES. (a) If, under prior law, the department proclaimed a quarantine against infested territory, no person may import into Texas from the quarantined territory a substance susceptible to cotton pest infestation.

(b) The department shall maintain a rigid inspection of substances susceptible to cotton pest contamination that are being

carried from quarantined territory into, through, or within this state.

Acts 1981, 67th Leg., p. 1175, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1993, 73rd Leg., ch. 847, Sec. 3, eff. Aug. 30, 1993. Renumbered from Sec. 74.054 and amended by Acts 1995, 74th Leg., ch. 957, Sec. 7, eff. June 16, 1995.

Sec. 74.011. REGULATION OF GINNING. A ginner may not gin cotton from a regulated zone under this subchapter unless the ginner disinfects the seed in accordance with rules of the department.

Acts 1981, 67th Leg., p. 1175, ch. 388, Sec. 1, eff. Sept. 1, 1981. Renumbered from Sec. 74.055 by Acts 1995, 74th Leg., ch. 957, Sec. 7, eff. June 16, 1995.

Sec. 74.012. INSPECTORS. The department may employ and prescribe the qualifications and duties of inspectors and other employees necessary to the administration of this subchapter.

Acts 1981, 67th Leg., p. 1176, ch. 388, Sec. 1, eff. Sept. 1, 1981. Renumbered from Sec. 74.059 and amended by Acts 1995, 74th Leg., ch. 957, Sec. 7, eff. June 16, 1995.

Sec. 74.013. COOPERATION WITH FEDERAL PROGRAMS. The department shall cooperate with the United States Department of Agriculture in any measure authorized by, and undertaken in accordance with, federal law for preventing the introduction or establishment of cotton pests in this state.

Acts 1981, 67th Leg., p. 1176, ch. 388, Sec. 1, eff. Sept. 1, 1981. Renumbered from Sec. 74.060 and amended by Acts 1995, 74th Leg., ch. 957, Sec. 7, eff. June 16, 1995.

SUBCHAPTER D. OFFICIAL COTTON GROWERS' BOLL WEEVIL ERADICATION FOUNDATION

Sec. 74.101. FINDINGS AND DECLARATION OF POLICY. (a) It is hereby found and declared that:

(1) the insects *Anthonomus grandis* Boheman, known as

the boll weevil, and *Pectinophora gossypiella*, known as the pink bollworm, are public nuisances and a menace to the cotton industry, and their eradication is a public necessity;

(2) because of the differences in soil conditions, growing seasons, farming techniques, and climate conditions among several areas in the state where cotton is grown, the eradication and suppression of the nuisance can best be accomplished by dividing the cotton-growing areas into separate zones so that integrated pest management programs may be developed for each zone;

(3) there is a need for a quasi-governmental entity acting under the supervision and control of the commissioner whose members are actual cotton growers who would be represented on the board of the entity by directors elected by them to manage eradication and suppression programs and to furnish expertise in the field of insect control and eradication, because such an entity would enhance the interest and participation of cotton growers in the program;

(4) because of the progress made in eradication, investments made by cotton growers in certain areas, the potential injustice to certain cotton growers who have made such investments, and the stage of development of the cotton crops in the statutory eradication zones, an urgent public necessity exists to validate and ratify the assessments, agreements, and obligations of the Texas Boll Weevil Eradication Foundation, Inc., made or incurred by the foundation and related to certain statutory zones;

(5) cotton growers, in partnership with the state and federal governments, have made significant investments toward the eradication of these pests in this state;

(6) it is essential to the well-being of the cotton industry and the agricultural economy of this state that the investments of the cotton growers and the state and federal governments be protected; and

(7) the establishment of a maintenance program to be carried out by the foundation under the supervision of the department is required to protect the investments in eradication.

(b) It is the intent of the legislature that the program of eradication and suppression be carried out with the best available

integrated pest management techniques.

(c) The department may recover costs for administration of this subchapter.

Added by Acts 1993, 73rd Leg., ch. 8, Sec. 1, eff. June 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 227, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 463, Sec. 1.01, eff. May 30, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 119 (S.B. [1428](#)), Sec. 1, eff. September 1, 2005.

Sec. 74.1011. DESIGNATION OF ENTITY TO CARRY OUT BOLL WEEVIL ERADICATION. (a) The Texas Boll Weevil Eradication Foundation, Inc., a Texas nonprofit corporation chartered by the secretary of state on September 14, 1993, shall be recognized by the department as the entity to plan, carry out, and operate eradication and diapause programs to eliminate the boll weevil and the pink bollworm from cotton in the state under the supervision of the department as provided by this subchapter.

(b) The commissioner may terminate the foundation's designation as the entity recognized to carry out boll weevil eradication by giving 45 days' written notice to the foundation and by designating a successor entity. If the commissioner designates a successor to the foundation, the successor has all the powers and duties of the foundation under this subchapter. Any successor to the foundation shall assume and shall be responsible for all obligations and liabilities relating to any notes, security agreements, assignments, loan agreements, and any other contracts or other documents entered into by the foundation with or for the benefit of any financial institution or its predecessor, successor, or assignee.

Added by Acts 1997, 75th Leg., ch. 463, Sec. 1.02, eff. May 30, 1997.

Sec. 74.102. DEFINITIONS. In this subchapter:

(1) "Board" means the board of directors of the Texas Boll Weevil Eradication Foundation, Inc.

(2) "Boll weevil" has the meaning assigned by Section

74.002.

(3) "Commissioner" means commissioner of agriculture.

(4) "Cotton" means:

(A) a cotton plant;

(B) a part of a cotton plant, including bolls, stalks, flowers, roots, and leaves; or

(C) cotton products, including seed cotton, cottonseed, and hulls.

(5) "Cotton grower" means a person who grows cotton intended to be commercial cotton. The term includes an individual who as owner, landlord, tenant, or sharecropper is entitled to share in the cotton grown and available for marketing from a farm or to share in the proceeds from the sale of the cotton from the farm or from an indemnity or other payment received from or related to the planting, growing, or failure of the cotton.

(6) "Eradication" means elimination of boll weevils or pink bollworms to the extent that the commissioner does not consider further elimination of boll weevils or pink bollworms necessary to prevent economic loss to cotton growers. Eradication includes diapause activities.

(7) "Eradication zone" means a geographic area:

(A) established under Section 74.1021; or

(B) designated by the commissioner in accordance with Section 74.105 in which cotton growers by referendum approve their participation in a boll weevil or pink bollworm eradication program.

(8) "Foundation" means the Texas Boll Weevil Eradication Foundation, Inc., a Texas nonprofit corporation.

(9) "Host" means a plant or plant product in which the boll weevil or pink bollworm is capable of completing any portion of its life cycle.

(10) "Infested" means the presence of the boll weevil or pink bollworm in any life stage or the existence of generally accepted entomological evidence from which it may be concluded with reasonable certainty that the boll weevil or pink bollworm is present.

(11) "Integrated pest management" is the coordinated

use of pest and environmental information with available pest control methods, including pesticides, natural predator controls, cultural farming practices, and climatic conditions, to prevent unacceptable levels of pest damage by the most economical means and with the least possible hazard to people, property, and the environment.

(12) "Pink bollworm" has the meaning assigned by Section [74.002](#).

(13) "Regulated article" means an article carrying or capable of carrying the boll weevil or pink bollworm, including cotton plants, seed cotton, gin trash, other hosts, or mechanical cotton harvesters.

Added by Acts 1993, 73rd Leg., ch. 8, Sec. 1, eff. June 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 227, Sec. 2, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 463, Sec. 1.03, eff. May 30, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 178 (H.B. [1580](#)), Sec. 3, eff. May 27, 2009.

Sec. 74.1021. STATUTORY ZONES. (a) The Northern High Plains Eradication Zone consists of Armstrong, Bailey, Briscoe, Castro, Deaf Smith, Floyd, Hale, Lamb, Parmer, Randall, and Swisher counties, and other areas as proposed by the commissioner by rule for inclusion in the zone and approved by referendum in the area to be added.

(b) The Rolling Plains Central Eradication Zone consists of Baylor, Callahan, Comanche, Eastland, Erath, Fisher, Haskell, Jones, Knox, Mitchell, Nolan, Palo Pinto, Scurry, Shackelford, Stephens, Stonewall, Throckmorton, and Young counties; all land in Archer County south of a line following Farm-to-Market Road 422 commencing at the Baylor County line running east to the intersection of Farm-to-Market Road 210, continuing east to the intersection of State Highway 25, and continuing east to the Clay County line; all land in Borden County east of a line seven miles west of the Scurry County line running south from the Garza County line to the Howard County line; and all land in Taylor County east of U.S. Highway 83 from a point commencing at the intersection of

U.S. Highway 83 and the south Taylor County line, north to the town of Bradshaw; thence north of Farm-to-Market Road 1086, as the farm-to-market road proceeds west and north to the intersection of the Farm-to-Market Road 1086 and U.S. Highway 277, being all land lying north of the farm-to-market road and west of U.S. Highway 277 from the intersection of Farm-to-Market Road 1086 and U.S. Highway 277 to the point where U.S. Highway 277 intersects the south boundary line of Taylor County; all land in Brown County east of a line following State Highway 279 to Brownwood and continuing along U.S. Highway 377 south to the McCulloch County line; and other areas as proposed by the commissioner by rule for inclusion in the zone and approved by referendum in the area to be added.

(c) The St. Lawrence Eradication Zone consists of that area of Midland County south of a line 15 miles south of Interstate 20 running from the Ector County line east to the Glasscock County line; Glasscock, Reagan, and Upton counties; and other areas as proposed by the commissioner by rule for inclusion in the zone and approved by referendum in the area to be added.

(d) The South Texas Winter Garden Eradication Zone consists of Aransas, Atascosa, Austin, Bee, Bexar, Brazoria, Calhoun, Colorado, DeWitt, Dimmit, Duval, Fort Bend, Frio, Goliad, Jackson, Jim Wells, Karnes, Kinney, Kleberg, La Salle, Lavaca, Live Oak, Matagorda, McMullen, Medina, Nueces, Refugio, San Patricio, Uvalde, Victoria, Wharton, Wilson, and Zavala counties, and other areas as proposed by the commissioner by rule for inclusion in the zone and approved by referendum in the area to be added. Austin, Brazoria, Colorado, Fort Bend, Jackson, Matagorda, and Wharton counties are included in the South Texas Winter Garden Eradication Zone only for purposes of the repayment of debt existing on April 30, 1997, and those counties may not be included in the zone for any other purpose unless the commissioner by rule proposes that an area be included in the zone and the proposal is approved by referendum in the area to be added. The commissioner may apportion any debt existing on April 30, 1997, and designate the appropriate assessment.

(e) The Southern High Plains-Caprock Eradication Zone consists of Andrews, Cochran, Crosby, Dawson, Dickens, Ector,

Gaines, Garza, Hockley, Howard, Kent, Lubbock, Lynn, Martin, Motley, Terry, and Yoakum counties; all land in Borden County lying west of a line seven miles west of the Scurry County line running south from the Garza County line to the Howard County line; that area of Midland County north of a line 15 miles south of Interstate 20 running from the Ector County line east to the Glasscock County line; and other areas as proposed by the commissioner by rule for inclusion in the zone and approved by referendum in the area to be added.

(f) The Southern Rolling Plains Eradication Zone consists of Coke, Coleman, Concho, Irion, McCulloch, Runnels, Schleicher, and Tom Green counties, all land in Taylor County lying west of U.S. Highway 83 from a point commencing at the intersection of U.S. Highway 83 and the south Taylor County line, north of the town of Bradshaw; thence all the land lying south of Farm-to-Market Road 1086, as the farm-to-market road proceeds west and north to its intersection with U.S. Highway 277, being all land lying south of the farm-to-market road and east of U.S. Highway 277 from the intersection of Farm-to-Market Road 1086 and U.S. Highway 277 to the point where U.S. Highway 277 intersects the south boundary line of Taylor County, and other areas as proposed by the commissioner by rule for inclusion in the zone and approved by referendum in the area to be added.

Added by Acts 1997, 75th Leg., ch. 463, Sec. 1.04, eff. May 30, 1997.

Sec. 74.1041. ADVISORY COMMITTEES. (a) The commissioner may appoint an advisory committee for an existing eradication zone or an area of the state that is to be considered by the commissioner for designation as or inclusion in an eradication zone. The committee shall gather advice, input, and guidance from cotton growers from the area represented by the committee concerning the interest in and concerns about the implementation of this subchapter.

(b) Each advisory committee may consider and make recommendations to the commissioner and the foundation concerning:

(1) the geographic boundaries for a proposed

eradication zone;

(2) the amount of local interest in operating an eradication program;

(3) the basis and amount of an assessment necessary to support an eradication program;

(4) the need to restructure any pre-existing debt from prior eradication activities;

(5) ongoing implementation of an eradication program approved by growers in an eradication zone; and

(6) any other matter requested by the commissioner or the foundation.

(c) Each advisory committee appointed under this section shall include a sufficient number of cotton growers to ensure adequate representation across the eradication zone, including at least one cotton grower from each county in the zone and other persons as determined by the commissioner.

(d) Advisory committees appointed under this section are immune from lawsuits and liability to the same extent the foundation is immune from lawsuits and liability under Section [74.129](#).

(e) An advisory committee established under this section is subject to the requirements of Chapters [551](#) and [552](#), Government Code.

Added by Acts 1997, 75th Leg., ch. 463, Sec. 1.05, eff. May 30, 1997. Amended by Acts 2001, 77th Leg., ch. 168, Sec. 1, eff. May 18, 2001.

Sec. 74.1042. CREATION OF NONSTATUTORY ERADICATION ZONES.

(a) The commissioner may by rule designate an area of the state as a proposed eradication zone as long as the area is not within a statutory zone under Section [74.1021](#) that has approved an eradication program by referendum.

(b) The commissioner may hold a public hearing within the proposed eradication zone to discuss the proposed geographic boundaries of the zone. The public hearing may include any other topics allowed under this subchapter.

(c) After the adoption of a rule under Subsection (a), the

commissioner shall conduct a referendum under Section 74.105.

Added by Acts 1997, 75th Leg., ch. 463, Sec. 1.05, eff. May 30, 1997.

Sec. 74.105. ERADICATION ZONE REFERENDA. (a) The commissioner shall conduct a referendum in each proposed eradication zone to determine whether cotton growers desire to establish an eradication zone.

(b) Eradication zone referenda shall be conducted under the procedures provided by Section 74.114 of this code.

(c) A proposed eradication zone referendum ballot must include or be accompanied by information about the proposed eradication zone, including:

(1) a statement of the purpose of the boll weevil or pink bollworm eradication program;

(2) the geographic area included in the proposed eradication zone;

(3) a general summary of rules adopted by the commissioner under Sections 74.114, 74.118, and 74.120 of this code, including a description of:

(A) cotton grower responsibilities; and

(B) penalties for noncompliance with rules adopted under this subchapter; and

(4) an address and toll-free telephone number that a cotton grower may use to request more information about the referendum or the boll weevil or pink bollworm eradication program.

(d) If a referendum to establish an eradication zone fails, the concurrent election of a board member from the proposed eradication zone under Section 74.106 has no effect, and the commissioner shall appoint a representative to the board from the area.

(e) The foundation may request the commissioner to call additional referenda in a proposed eradication zone in which a referendum has failed. An additional eradication zone referendum and concurrent board election may be held no earlier than one year after the date of the last referendum.

(f) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 577, Sec. 8,

eff. June 14, 2013.

Amended by Acts 1995, 74th Leg., ch. 227, Sec. 3, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 463, Sec. 1.06, 2.01, eff. May 30, 1997.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 577 (S.B. [818](#)), Sec. 8, eff. June 14, 2013.

Sec. 74.106. BOARD ELECTIONS. (a) The initial election for board members from a proposed eradication zone shall be held concurrently with an eradication zone referendum held under Section [74.105](#). Each eradication zone shall be represented on the board and shall remain represented on the board until eradication operations are concluded and all debt of the eradication zone is paid.

(b) A board election shall be conducted under the procedures provided by this section and Section [74.114](#) of this code.

(c) A cotton grower who is eligible to vote in a referendum or election under this subchapter is eligible to be a candidate for and member of the board if the person has at least seven years of experience as a cotton grower and otherwise meets the qualifications for the position.

(d) A cotton grower who wants to be a candidate for the board must meet the qualifications for board membership and file an application with the commissioner. The application must be:

(1) filed not later than the 30th day before the date set for the board election;

(2) on a form approved by the commissioner; and

(3) signed by at least 10 cotton growers who are eligible to vote in the board election.

(e) On receipt of an application and verification that the application meets the requirements of Subsection (d) of this section, an applicant's name shall be placed on the ballot for the board election.

(f) An eligible voter may vote for a cotton grower whose name does not appear on the official ballot by writing that person's name on the ballot.

(g) A board election must be preceded by at least 45 days

notice published in one or more newspapers published and distributed in the proposed or established eradication zone. The notice shall be published not less than once a week for three consecutive weeks. Not later than the 45th day before the date of the election, direct written notice of the election shall be given to each county agent in the eradication zone.

(h) Each board member shall be sworn into office by a representative of the commissioner by taking the oath of office required for elected officers of the state.

Added by Acts 1993, 73rd Leg., ch. 8, Sec. 1, eff. June 1, 1993.

Amended by Acts 1997, 75th Leg., ch. 463, Sec. 1.07, 2.02, eff. May 30, 1997.

Sec. 74.107. COMPOSITION OF BOARD. (a) The board shall be composed of members elected from each statutory eradication zone established and validated by referendum, members elected from each nonstatutory eradication zone established by referendum, members appointed by the commissioner from other cotton-growing areas of the state, and members appointed by the commissioner under Subsection (b). The commissioner shall appoint an initial board composed of 15 members. Except as provided by Subsection (b), the term of each board position may not exceed four years.

(b) In making appointments under this section, the commissioner shall appoint the following board members, selected from a variety of cotton-growing regions of the state, for four-year terms:

(1) an agricultural lender;

(2) an independent entomologist who is an integrated pest management specialist;

(3) two representatives from industries allied with cotton production; and

(4) a representative from the pest control industry.

(c) The commissioner may change the number of board positions or the eradication zone representation on the board to accommodate changes in the number of eradication zones. A change under this subsection may not contravene another provision of this subchapter.

(d) A vacancy on the board shall be filled by appointment by the commissioner for the unexpired term.

(e) On 30 days' notice and opportunity for hearing, the commissioner may replace any unelected board member of the foundation.

Added by Acts 1993, 73rd Leg., ch. 8, Sec. 1, eff. June 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 227, Sec. 4, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 463, Sec. 1.08, eff. May 30, 1997.

Sec. 74.108. POWERS OF BOARD AND COMMISSIONER. (a) The board may:

(1) conduct programs consistent with the declaration of policy stated in Section [74.101](#);

(2) accept, as necessary to implement this chapter, gifts and grants;

(3) borrow money, with the approval of the commissioner, as necessary to execute this chapter;

(4) take other action and exercise other authority as necessary to execute any act authorized by this subchapter or the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes); and

(5) form an advisory committee composed of individuals from this state, other states, or other countries and change membership on the committee, as necessary. Any advisory committee created under this subdivision for the purpose of establishing treatment methods shall include among its members persons with knowledge of the effects of different treatments on the health of agricultural workers, the local population, and the ecosystem, including but not limited to the effects of a particular method of treatment on beneficial organisms and wildlife, the potential for secondary infestations from nontarget pests, and the potential for pest resistance to particular methods of treatment.

(b) On petition of 30 percent of the cotton growers eligible to vote within the proposed area, the commissioner may, or at the commissioner's discretion, the commissioner may, by rule add an area to an eradication zone or transfer an area or county from one statutory zone to another zone if:

(1) cotton production has begun or could begin in the area;

(2) the area is adjacent to an eradication zone or is in an area with biological characteristics similar to the eradication zone; and

(3) the addition is approved in a referendum held in the area.

(c) The board must adopt a procurement policy, subject to approval by the commissioner, outlining the procedures to be used in purchasing.

(d) The commissioner at any time may inspect the books and other financial records of the foundation.

Added by Acts 1993, 73rd Leg., ch. 8, Sec. 1, eff. June 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 227, Sec. 5, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 463, Sec. 1.09, eff. May 30, 1997; Acts 1999, 76th Leg., ch. 286, Sec. 1, eff. May 29, 1999.

Sec. 74.109. BOARD DUTIES. (a) The board shall have an annual independent audit of the books, records of account, and minutes of proceedings maintained by the foundation prepared by an independent certified public accountant or a firm of independent certified public accountants. The audit shall include information for each zone in which an eradication program has been conducted under this subchapter. The audit shall be filed with the board, the commissioner, and the state auditor and shall be made available to the public by the foundation or the commissioner. The state auditor may examine any work papers from the independent audit or may audit the transactions of the foundation if the state auditor determines that an audit is necessary.

(b) Not later than the 45th day after the last day of the fiscal year, the board shall submit to the commissioner a report itemizing all income and expenditures and describing all activities of the foundation during the fiscal year.

(c) The foundation shall provide fidelity bonds in amounts determined by the board for employees or agents who handle funds for the foundation.

(d) The foundation and the board are state agencies for the

following purposes only:

(1) exemption from taxation including exemption from sales and use taxes, vehicle registration fees, and taxes under Chapter 152, Tax Code; and

(2) indemnification under Chapter 104, Civil Practice and Remedies Code.

(e) Funds collected by the foundation are not state funds and are not required to be deposited in the state treasury. The foundation shall deposit all money collected under this subchapter in a bank or other depository approved by the commissioner.

(f) The foundation is a governmental unit under Section 101.001, Civil Practice and Remedies Code, and is entitled to governmental immunity. A tort claim against the foundation must be made under Chapter 101, Civil Practice and Remedies Code.

(g) The board shall collect data on the type and quantity of pesticides used in accordance with this subchapter. The data shall be filed with the commissioner.

(h) All revenue collected under this subchapter shall be used solely to finance programs approved by the commissioner as consistent with this subchapter.

(i) The foundation is subject to the requirements of:

(1) the open meetings law, Chapter 551, Government Code; and

(2) the open records law, Chapter 552, Government Code.

(j) A board member may not vote on any matter in which the member has a direct pecuniary interest. A board member is subject to the same restrictions as a local public official under Chapter 171, Local Government Code.

Added by Acts 1993, 73rd Leg., ch. 8, Sec. 1, eff. June 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 227, Sec. 6, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 463, Sec. 1.10, 2.03, eff. May 30, 1997.

Sec. 74.1091. SEPARATION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate the policy-making responsibilities of the board and the management

responsibilities of the chief executive officer and staff of the foundation.

Added by Acts 2021, 87th Leg., R.S., Ch. 848 (S.B. 703), Sec. 23, eff. September 1, 2021.

Sec. 74.1095. ADMINISTRATIVE REVIEW. (a) The commissioner by rule shall establish procedures for the informal review and resolution of a claim arising out of certain acts taken by the foundation under this subchapter. Rules established under this section shall include a designation of the acts that are subject to review under this subsection and the appropriate remedial action, as authorized by this subchapter.

(b) A person dissatisfied with the department's informal resolution of a claim under procedures adopted under Subsection (a) may appeal the department's decision to the commissioner.

(c) A decision issued by the commissioner on a claim appealed under Subsection (b) is the final administrative action of the department and is subject to judicial review under Chapter 2001, Government Code.

(d) This section does not constitute a waiver of the state's immunity from liability.

Added by Acts 1997, 75th Leg., ch. 463, Sec. 1.11, eff. May 30, 1997.

Sec. 74.110. LIABILITY OF FOUNDATION MEMBERS, OFFICERS, AND EMPLOYEES. (a) Except for instances of gross negligence, individual criminal actions, or acts of dishonesty, the foundation's members, directors, officers, and employees are not individually liable to a cotton grower or other person for:

- (1) errors in judgment;
- (2) mistakes; or
- (3) other acts or omissions.

(b) A foundation member, officer, or employee is not individually liable for an act or omission of another foundation member, officer, or employee.

Added by Acts 1993, 73rd Leg., ch. 8, Sec. 1, eff. June 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 227, Sec. 7, eff. Sept. 1,

1995; Acts 1997, 75th Leg., ch. 463, Sec. 1.12, eff. May 30, 1997.

Sec. 74.1101. LIABILITY OF APPLICATORS. (a) In this section, "applicator" means an individual or other person that is not a member, director, officer, or employee of the foundation and that contracts with the foundation to apply pesticides or other chemicals using aircraft or other equipment to further or support the eradication or diapause efforts undertaken under this subchapter.

(b) An applicator is not jointly and severally liable for any act or omission of the foundation under this subchapter.

(c) The foundation shall have liability coverage in effect for any eradication or diapause efforts for which it uses applicators. The coverage shall apply to acts and omissions of the foundation and volunteers and be in the amount of at least \$500,000 for each single occurrence of death, bodily injury, or property damage.

Added by Acts 1997, 75th Leg., ch. 463, Sec. 1.13, eff. May 30, 1997. Amended by Acts 1999, 76th Leg., ch. 286, Sec. 2, eff. May 29, 1999.

Sec. 74.1102. CONTRACTING. (a) For a purchase of goods and services under this chapter, the foundation may purchase goods and services that provide the best value for the foundation.

(b) In determining the best value for the foundation, the purchase price and whether the goods or services meet specifications are the most important considerations. However, the foundation may consider other relevant factors, including:

(1) the quality and reliability of the goods and services;

(2) the delivery terms;

(3) indicators of probable vendor performance under the contract, including:

(A) past vendor performance;

(B) the vendor's financial resources and ability to perform;

(C) the vendor's experience or demonstrated

capability and responsibility; and

(D) the vendor's ability to provide reliable maintenance agreements and support;

(4) the cost of any employee training associated with a purchase; and

(5) other factors relevant to determining the best value for the foundation in the context of a particular purchase.

Added by Acts 1999, 76th Leg., ch. 286, Sec. 3, eff. May 29, 1999.

Sec. 74.111. BOARD MEMBER COMPENSATION. Board members serve without compensation but are entitled to reimbursement for reasonable and necessary expenses incurred in the discharge of their duties.

Added by Acts 1993, 73rd Leg., ch. 8, Sec. 1, eff. June 1, 1993.

Amended by Acts 1997, 75th Leg., ch. 463, Sec. 2.04, eff. May 30, 1997.

Sec. 74.112. DISCONTINUATION OF PROGRAM AND FOUNDATION AND DISPOSITION OF FUNDS ON DISCONTINUANCE. (a) On the determination by the foundation that the boll weevil eradication program has been completed in all eradication zones established under this subchapter for boll weevil control and the pink bollworm eradication program has been completed in any eradication zone established under this chapter for pink bollworm control, the foundation shall provide notice of such completion to the commissioner along with a request for discontinuance of the eradication program and collection of the assessment. Any such request shall include documentation supporting the eradication of the boll weevil in all eradication zones established for boll weevil eradication or pink bollworm in any eradication zone established for pink bollworm eradication and a plan for discontinuance of the program and assessment.

(b) The commissioner shall determine whether or not the further elimination of the boll weevil or pink bollworm is necessary in the eradication zones and approve or disapprove discontinuance of the foundation and the plan for dissolution.

(c) On completion of dissolution, the foundation shall file

a final report with the commissioner, including a financial report, and submit all remaining funds into the trust of the commissioner. Final books of the foundation shall be filed with the commissioner and are subject to audit by the department.

(d) The commissioner shall pay from the foundation's remaining funds all of the foundation's outstanding obligations.

(e) Funds remaining after payment under Subsection (d) of this section shall be returned to contributing cotton growers on a pro rata basis.

(f) If 30 percent or more of the cotton growers eligible to vote within a zone participating in the program present to the commissioner a petition calling for a referendum of the qualified voters on the proposition of discontinuing the program, the commissioner may conduct a referendum for that purpose if:

(1) the debt of the zone has been paid in full; and

(2) the foundation determines, and the commissioner approves the foundation's determination, that the cotton growers in the zone have paid more than one-half of the eradication program funds collected by the foundation and used for the eradication program in the zone from the date of the program's inception until the date the petition is presented to the commissioner.

(f-1) The commissioner may not conduct a referendum under Subsection (f) and shall return the petition if the commissioner determines that the requirements of Subsection (f)(1) or (2) are not satisfied.

(g) The commissioner shall give notice of the referendum, the referendum shall be conducted, and the results shall be declared in the manner provided by law for the original referendum and election, with any necessary exceptions provided by rule of the commissioner.

(h) The commissioner shall conduct the referendum within 90 days of the date of filing of the petition, except that no such referendum may be held within two years of any other referendum in the eradication zone pertaining to establishing or discontinuing the eradication zone.

(i) Approval of the proposition is by the same vote as required in a referendum under Section [74.114\(g\)](#). If the

proposition is approved, the eradication program is abolished and the eradication zone ceases to exist on payment of all debts of the eradication zone.

Added by Acts 1993, 73rd Leg., ch. 8, Sec. 1, eff. June 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 227, Sec. 8, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 463, Sec. 1.14, 2.05, eff. May 30, 1997.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 577 (S.B. [818](#)), Sec. 1, eff. June 14, 2013.

Sec. 74.113. ASSESSMENT REFERENDA. (a) The commissioner shall propose the assessment needed in each eradication zone to ensure the stability of the cotton industry by eradicating the public nuisance caused by the boll weevil and the pink bollworm.

(b) The commissioner shall propose in a referendum the:

(1) maximum assessment to be paid by cotton growers having production in the eradication zone; and

(2) time for which the assessment will be made.

(c) With the commissioner's approval, the foundation may make an assessment in an eradication zone at a level less than the assessment approved by the referendum.

(d) The commissioner shall conduct an assessment referendum under the procedures provided by Section [74.114](#).

(e) If an assessment referendum is approved, the foundation may collect the assessment.

(f) An assessment levied on cotton growers in an eradication zone may be applied only to:

(1) eradication;

(2) the foundation's operating costs, including payments on debt incurred for a foundation activity; and

(3) the conducting of other programs consistent with the declaration of policy stated in Section [74.101](#).

(g) The assessment shall be adequate and necessary to achieve the goals of this subchapter. The amount of the assessment shall be determined by criteria established by the commissioner, including:

- (1) the extent of infestation;
- (2) the amount of acreage planted;
- (3) historical efforts to eradicate;
- (4) the growing season;
- (5) epidemiology;
- (6) historical weather conditions; and
- (7) the costs and financing of the program.

(h) The commissioner shall give notice of and hold a public hearing within the eradication zone regarding the proposed assessment referendum. Before the referendum, the commissioner shall review and approve:

- (1) the amount of the assessment;
- (2) the basis for the assessment;
- (3) the time for payment of the assessment;
- (4) the method of allocation of the assessment among cotton growers;

(5) the restructuring and repayment schedule for any pre-existing debt; and

(6) the amount of debt to be incurred in the eradication zone.

(i) The commissioner shall on a zone-by-zone basis set the date on which assessments are due and payable.

(j) Each year, the commissioner shall review and approve the foundation's operating budget.

(k) The foundation may prepare and mail billing statements to each cotton grower subject to the assessment that state the amount due and the due date. The assessments shall be remitted to the foundation.

(l) With the approval of the board and the commissioner, the foundation may transfer the proceeds from the collection of assessments in one eradication zone to another eradication zone. The board shall consult with affected cotton grower steering committees before recommending that the commissioner approve the transfer of proceeds under this subsection. The transferred proceeds may be applied only as provided by Subsection (f).

Added by Acts 1993, 73rd Leg., ch. 8, Sec. 1, eff. June 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 227, Sec. 9, eff. Sept. 1,

1995; Acts 1997, 75th Leg., ch. 463, Sec. 1.15, eff. May 30, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 178 (H.B. 1580), Sec. 4, eff. May 27, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 577 (S.B. 818), Sec. 2, eff. June 14, 2013.

Sec. 74.1135. ALTERNATIVE METHOD OF ASSESSMENTS. (a) The commissioner may adopt rules that provide for an alternative method, manner, and mechanism by which assessments are imposed and collected under this subchapter. The commissioner may adopt the rules only after receiving a recommendation from the board. The board shall consult with cotton grower steering committees and the technical advisory committee in formulating a recommendation to the commissioner under this subsection. The commissioner may accept, reject, or modify a board recommendation. The rules apply notwithstanding Section 74.113. The rules must require any person collecting an assessment to forward the assessment to the foundation.

(b) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 577, Sec. 8, eff. June 14, 2013.

Added by Acts 2009, 81st Leg., R.S., Ch. 178 (H.B. 1580), Sec. 5, eff. May 27, 2009.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 577 (S.B. 818), Sec. 8, eff. June 14, 2013.

Sec. 74.114. CONDUCT OF BOARD ELECTIONS AND REFERENDA; BALLOTING. (a) The commissioner shall conduct a referendum or board election authorized under this subchapter. At the end of each four-year period in which an eradication program has been operational in a zone, the commissioner shall hold a referendum in the zone on the continuation of the eradication program. The referendum shall be held at the same time as the election of a board member from the zone. Approval of the referendum on continuation is by a majority of those voting in the referendum.

(a-1) Notwithstanding Subsection (a), the commissioner may

conduct only one referendum on continuation in each zone on or after September 1, 2005. The commissioner shall include on the ballot adequate notice of:

(1) the fact that a referendum on continuation is the final referendum on continuation for the zone in which it is held; and

(2) the existence of the petition provision in Section [74.112\(f\)](#).

(b) The foundation shall bear all expenses incurred in conducting a referendum or board election.

(c) The commissioner shall adopt rules for voting in board elections and referenda to establish or continue eradication zones. Rules adopted under this subsection must include provisions for determining:

(1) who is a cotton grower eligible to vote in an election or referendum;

(2) whether a board member is elected by a plurality or a majority of the votes cast; and

(3) the area from which each board member is elected.

(d) A cotton grower having cotton production in a proposed or established eradication zone is entitled to:

(1) vote in a referendum concerning the eradication zone; and

(2) elect board members to represent the eradication zone.

(e) An eligible cotton grower may vote only once in a referendum or board election.

(f) Ballots in a referendum or board election shall be mailed directly to a central location, to be determined by the commissioner. A cotton grower eligible to vote in a referendum or board election who has not received a ballot from the commissioner, foundation, or another source shall be offered the option of requesting a ballot by mail or obtaining a ballot at the office of the county agent of the Texas Agricultural Extension Service or a government office distributing ballots in a county in the proposed or established zone in which the referendum or board election is conducted.

(g) A referendum is approved if:

(1) at least two-thirds of those voting vote in favor of the referendum; or

(2) those voting in favor of the referendum farm more than 50 percent, as determined by the commissioner, of the cotton acreage in the relevant eradication zone.

(h) If a referendum under this subchapter is not approved, the commissioner may conduct another referendum. A referendum under this subsection may not be held before one year after the date on which the last referendum on the same issue was held.

(i) A public hearing regarding the proposed eradication program, including information regarding regulations to be promulgated by the commissioner, may be held by the commissioner in each of several locations within each boll weevil or pink bollworm eradication zone. The area posted for each hearing shall include no more than six contiguous counties that have cotton production at the time of the hearing.

(j) Individual voter information, including an individual's vote in a referendum or board election conducted under this section, is confidential and is not subject to disclosure under the open records law, Chapter 552, Government Code.

Added by Acts 1993, 73rd Leg., ch. 8, Sec. 1, eff. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 227, Sec. 10, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 463, Sec. 1.16, 2.06, eff. May 30, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 119 (S.B. 1428), Sec. 2, eff. September 1, 2005.

Sec. 74.115. PAYMENT OF ASSESSMENTS; ASSESSMENT LIENS.

(a) A cotton grower who fails to pay an assessment levied under this subchapter when due may be subject, after reasonable notice and opportunity for hearing, to a penalty set by the commissioner. In determining the amount of the penalty to be assessed, the commissioner shall consider:

(1) the seriousness of the violation, including the nature, circumstances, and extent of the violation;

(2) the history of previous violations;

- (3) the amount necessary to deter future violations;
- (4) the economic situation of the cotton grower; and
- (5) any other matter that justice may require.

(b) The foundation may develop a compliance certificate program to manage the payment and collection of an assessment levied under this subchapter. Under the program the foundation, subject to department rules, may issue a compliance certificate for cotton for which an assessment has been paid.

(c) In addition to any other remedies for the collection of assessments and penalties, the commissioner may adopt rules relating to the compliance certificate program for eradication assessments. The rules may include:

- (1) provisions establishing and relating to the obligations of growers, ginnerers, and buyers in due course of cotton produced in active eradication zones to ensure that assessments are paid within a prescribed time period;

- (2) provisions allowing incentives in the form of discounted assessments for growers who pay assessments within a prescribed time period;

- (3) provisions establishing penalties and interest against growers who pay assessments after a prescribed time period; and

- (4) other provisions the commissioner may determine are proper.

(d) In addition to any other remedies for the collection of assessments and penalties, an assessment lien in favor of the foundation attaches and is perfected 60 days after the date the foundation mails notice of the assessment on cotton produced and harvested that year from the acreage that is subject to the assessment that is due and unpaid. An assessment lien is not an agricultural lien for the purposes of Chapter 9, Business & Commerce Code, and is not subject to the provisions of that chapter. An assessment lien is subject to and preempted by the Food Security Act of 1985 (7 U.S.C. Section 1631 et seq.) and shall be treated under that Act in the same manner as a security interest created by the seller. A buyer of cotton takes free of the assessment lien if the buyer:

(1) receives a compliance certificate issued by the foundation when the buyer purchases the cotton that certifies that the assessment has been paid to the foundation;

(2) pays for the cotton by a check on which the department is named as a joint payee;

(3) does not receive notice of the assessment lien as required by the Food Security Act of 1985 (7 U.S.C. Section 1631 et seq.); or

(4) buys the cotton from a person other than the producer of the cotton.

(e) The foundation may assign, with the approval of the commissioner, assessments or liens in favor of the foundation as collateral for a loan to the foundation only if the proceeds of the loan are designated for use in the eradication zone from which the assessments or liens originated.

(f) If the department has cause to believe that a violation of this section or rules promulgated under this section has occurred, the department may investigate and, during normal business hours, audit and inspect the records of the person who is the subject of the investigation.

Added by Acts 1993, 73rd Leg., ch. 8, Sec. 1, eff. June 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 227, Sec. 11, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 463, Sec. 1.17, eff. May 30, 1997; Acts 1999, 76th Leg., ch. 286, Sec. 4, eff. May 29, 1999; Acts 2001, 77th Leg., ch. 168, Sec. 2, eff. May 18, 2001.

Sec. 74.116. EXEMPTION FROM ASSESSMENT PENALTIES. (a) The commissioner by rule shall adopt criteria for exemption from payment of assessment penalties under Section 74.115 of this code a cotton grower for whom payment would impose an undue financial burden.

(b) A cotton grower may not qualify for an exemption under this section for a year in which the amount computed by subtracting the assessments and penalties due under this subchapter from the cotton grower's net income subject to federal income taxation in the previous year is greater than \$15,000.

(c) A cotton grower who applies for an exemption under this

section must use a form prescribed by the commissioner. A cotton grower must file a separate application form for each year for which the cotton grower claims an exemption.

(d) The commissioner may establish a payment plan for a cotton grower applying for an exemption under this section.

(e) The commissioner shall promptly notify an applicant of the determination regarding the applicant's request for an exemption.

(f) If an exemption under this section is denied, assessments and penalties for the year for which the application is made are due on the later of:

(1) the date on which they would be due in the absence of an application for exemption; or

(2) 30 days after the date the applicant receives notice of the denial.

(g) In addition to the authority provided under Subsections (a)-(f), the commissioner may reduce or waive assessment penalties as appropriate and necessary.

Added by Acts 1993, 73rd Leg., ch. 8, Sec. 1, eff. June 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 227, Sec. 12, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 463, Sec. 1.18, eff. May 30, 1997.

Sec. 74.117. ENTRY OF PREMISES; ERADICATION ACTIVITIES; INSPECTIONS. The department, the foundation, or a designated representative of either entity may enter cotton fields or other premises to carry out the purposes of this subchapter and Subchapters A and B of this chapter, which include the treatment and monitoring of growing cotton or other host plants. The department, the foundation, or a designated representative of either entity may inspect fields or premises in this state for the purpose of determining whether the property is infested with the boll weevil or the pink bollworm. An inspection must be conducted during reasonable daylight hours. The department shall give notice by publication of the planned schedule of dates for entry by the department, the foundation, or a designated representative of either entity, to the fields or premises to carry out the purposes of this subchapter, including treatment, monitoring, or inspection

functions. The department shall publish notice of the planned schedule to enter the fields or premises in a newspaper of general circulation in the eradication zone not less than once a week for two weeks immediately before the scheduled dates of entry. In addition to the notice published by the department, the foundation shall post notice of the planned schedule to enter fields or premises to carry out the purposes of this subchapter at the county courthouse of each county in the eradication zone not less than 15 days before the planned dates of entry.

Added by Acts 1993, 73rd Leg., ch. 8, Sec. 1, eff. June 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 227, Sec. 13, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 463, Sec. 1.19, eff. May 30, 1997.

Sec. 74.118. AUTHORITY TO PROHIBIT PLANTING OF COTTON AND REQUIRE PARTICIPATION IN ERADICATION PROGRAM. (a) The commissioner may adopt reasonable rules regarding areas where cotton may not be planted in an eradication zone if there is reason to believe planting will jeopardize the success of the program by making treatment impracticable or present a hazard to public health or safety.

(b) The commissioner may adopt rules relating to noncommercial cotton located in eradication zones and requiring that all growers of commercial cotton in an eradication zone participate in a boll weevil or pink bollworm eradication program that includes cost sharing as required by the rules.

(c) Notice of prohibitions and requirements shall be given by publication for one day each week for three successive weeks in a newspaper having general circulation in the affected area.

(d) The commissioner may adopt a reasonable schedule of penalty fees to be assessed against growers in a designated eradication zone who do not meet the requirements of the rules issued by the commissioner relating to reporting of acreage and participation in cost sharing. The penalty fees adopted may not exceed \$50 per acre.

(e) If a grower fails to meet the requirements of rules adopted by the commissioner, the commissioner may order the destruction of cotton not in compliance with the rules. Costs

incurred by the commissioner in the destruction of cotton may be assessed against the grower.

Added by Acts 1993, 73rd Leg., ch. 8, Sec. 1, eff. June 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 227, Sec. 14, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 463, Sec. 2.07, eff. May 30, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 178 (H.B. [1580](#)), Sec. 6, eff. May 27, 2009.

Sec. 74.119. AUTHORITY FOR DESTRUCTION OR TREATMENT OF COTTON IN ERADICATION ZONES; COMPENSATION PAYABLE. (a) The department shall destroy or treat hostable volunteer or other hostable noncommercial cotton and establish procedures for the purchase and destruction of commercial cotton in eradication zones if the department determines the action is necessary to carry out the purposes of this subchapter. The department is not liable to the owner or lessee for the destruction of or injury to any cotton that was planted in an eradication zone after publication of notice as provided by this subchapter. The foundation is liable for the destruction of cotton if the cotton was planted in an eradication zone before publication of the notice.

(b) Not later than January 1, 2010, the department shall adopt rules providing for the regulation and control of volunteer and other noncommercial cotton in pest management zones. At a minimum, the rules must:

(1) provide a grower or landowner with a period of time in which the grower or owner is required to destroy hostable volunteer or other hostable noncommercial cotton on receipt of a notice from the department; and

(2) allow the department or a person designated by the department:

(A) to monitor and treat hostable volunteer or other hostable noncommercial cotton that is located in a crop field for boll weevil infestation if the grower or landowner does not destroy the cotton in compliance with the notice from the department; and

(B) to destroy hostable volunteer or other

hostable noncommercial cotton that is not in a crop field, as provided by Section 74.004.

(c) If a grower or landowner does not destroy hostable volunteer or other hostable noncommercial cotton as required by Subsection (b)(1), the grower or owner shall pay to the department a volunteer cotton fee in an amount determined by the department. A fee under this subsection:

(1) may be assessed only on acreage where hostable volunteer or other hostable noncommercial cotton is located;

(2) may not be less than one-half the amount the grower or owner would owe if the entire acreage were planted with cotton; and

(3) shall be deposited to the credit of the hostable cotton fee account established by Section 74.0032.

Added by Acts 1993, 73rd Leg., ch. 8, Sec. 1, eff. June 1, 1993.
Amended by Acts 1997, 75th Leg., ch. 463, Sec. 2.08, eff. May 30, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 178 (H.B. 1580), Sec. 7, eff. May 27, 2009.

Sec. 74.120. AUTHORITY TO ADOPT RULES. (a) The commissioner shall adopt rules to protect individuals, livestock, wildlife, and honeybee colonies on any premises in an eradication zone on which cotton plants are being grown that have been or are being treated to eradicate the boll weevil or the pink bollworm.

(b) Rules adopted under this section shall establish the criteria by which the foundation develops its procedures and methods of treatment, which shall:

(1) establish a methodology for determining when boll weevil or pink bollworm population levels have reached economic significance;

(2) establish an effective treatment regimen that seeks to provide the least possible risk to workers, the public, and the environment;

(3) minimize the effects of the use of pesticides on long-term control methods, including but not limited to the effect

a particular pesticide may have on biological controls;

(4) establish methods for monitoring boll weevils, pink bollworms, and secondary pests;

(5) establish methods for verifying pesticide use reduction; and

(6) consider the acute and chronic toxicity of particular pesticides and the quantity of particular pesticides needed. Eradication zone treatment plans may take into account the potential for the use of smaller quantities of more toxic substances to result in fewer health and environmental risks than larger quantities of less toxic substances.

(c) The commissioner may adopt other reasonable rules necessary to carry out the purposes of this subchapter and Subchapters A and B of this chapter. All rules issued under this subchapter must be adopted and published in accordance with state requirements.

(d) Repealed by Acts 2021, 87th Leg., R.S., Ch. 848 (S.B. 703), Sec. 56(6), eff. September 1, 2021.

Added by Acts 1993, 73rd Leg., ch. 8, Sec. 1, eff. June 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.02, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 227, Sec. 15, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 463, Sec. 1.20, 2.09, eff. May 30, 1997.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 848 (S.B. 703), Sec. 56(6), eff. September 1, 2021.

Sec. 74.121. REPORTS. Each person in an active eradication zone growing cotton in this state shall furnish to the foundation on forms supplied by the foundation information that the foundation requires concerning the size and location of all commercial cotton fields and of noncommercial patches of cotton grown for ornamental or other purposes. The foundation may provide an incentive for early and timely reporting.

Added by Acts 1993, 73rd Leg., ch. 8, Sec. 1, eff. June 1, 1993.

Amended by Acts 1997, 75th Leg., ch. 463, Sec. 1.21, eff. May 30, 1997.

Sec. 74.122. QUARANTINE. (a) The department may adopt rules relating to quarantining areas of this state that are infested with the boll weevil or the pink bollworm. The rules must address the storage of regulated articles and the movement of regulated articles into and out of a quarantined area. The department may also adopt rules governing the movement of regulated articles from other states into this state if the articles are known to be infested with the boll weevil or the pink bollworm.

(b) The department shall adopt rules to prohibit the movement of cotton and regulated articles from an area infested with the boll weevil if the area is not participating in the boll weevil eradication program under this subchapter.

Added by Acts 1993, 73rd Leg., ch. 8, Sec. 1, eff. June 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 227, Sec. 16, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 463, Sec. 2.10, eff. May 30, 1997.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 577 (S.B. [818](#)), Sec. 3, eff. June 14, 2013.

Sec. 74.123. DOCUMENTING REGULATED ARTICLES. To implement this subchapter, the department may issue or authorize issuance of:

(1) a certificate that indicates that a regulated article is not infested with the boll weevil or the pink bollworm; and

(2) a permit that provides for the movement of a regulated article to a restricted designation for limited handling, use, or processing.

Added by Acts 1993, 73rd Leg., ch. 8, Sec. 1, eff. June 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 227, Sec. 17, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 463, Sec. 2.11, eff. May 30, 1997.

Sec. 74.124. COOPERATIVE PROGRAMS AUTHORIZED. (a) The foundation may carry out programs to destroy and eliminate the boll weevil and the pink bollworm in this state by cooperating through written agreements, as approved by the commissioner, with:

(1) an agency of the federal government;

(2) a state agency;

(3) an appropriate agency of a foreign country contiguous to the affected area to the extent allowed by federal law;

(4) a person who is engaged in growing, processing, marketing, or handling cotton;

(5) a group of persons in this state involved in similar programs to carry out the purposes of this subchapter;

(6) an appropriate state agency of another state contiguous to the affected area, to the extent allowed by federal law, the law of the contiguous state, and the law of this state; or

(7) an appropriate association of cotton producers or boll weevil foundations in more than one state, for the purpose of facilitating cooperation with and funding assistance to this state to protect against reinfestation with the boll weevil.

(b) An agreement entered into under this section may provide for cost sharing and for division of duties and responsibilities under this subchapter and may include other provisions to carry out the purposes of this subchapter.

(c) Agreements under Subsections (a)(4)-(5) must be approved in each referendum required under this subchapter other than a referendum to discontinue an eradication program. The agreements must be approved by the same margin as required in the retention referendum.

Added by Acts 1993, 73rd Leg., ch. 8, Sec. 1, eff. June 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 227, Sec. 18, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 463, Sec. 1.22, 2.12, eff. May 30, 1997; Acts 2001, 77th Leg., ch. 168, Sec. 3, eff. May 18, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 577 (S.B. [818](#)), Sec. 4, eff. June 14, 2013.

Sec. 74.125. ORGANIC COTTON GROWERS. (a) The commissioner shall develop rules and procedures to:

(1) protect the eligibility of organic cotton growers to be certified by the commissioner;

(2) ensure that organic and transitional certification by the commissioner continue to meet national

certification standards in order for organic cotton to maintain international marketability; and

(3) in all events maintain the effectiveness of the boll weevil or pink bollworm eradication program administered under this subchapter.

(b) The board may not treat or require treatment of organic cotton fields with chemicals that are not approved for use on certified organic cotton. Plow-up may be required as an alternative to chemicals. Rules adopted under Subsection (a) may provide indemnity for the organic cotton growers for reasonable losses that result from a prohibition of production of organic cotton or from any requirement of destruction of organic cotton. If time is reasonably available for the production of an economically feasible alternative crop, the board may require mitigation of losses with the production of an alternative crop.

Added by Acts 1993, 73rd Leg., ch. 8, Sec. 1, eff. June 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 227, Sec. 19, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 463, Sec. 1.23, eff. May 30, 1997.

Sec. 74.126. PENALTIES. (a) A person who violates this subchapter or a rule adopted under this subchapter or who alters, forges, counterfeits, or uses without authority a certificate, permit, or other document issued under this subchapter or under a rule adopted under this subchapter commits an offense.

(b) An offense under this section is a Class C misdemeanor.

(c) If the commissioner determines that a violation of this subchapter or a rule adopted under this subchapter has occurred, the commissioner may request that the attorney general or the county or district attorney of the county in which the alleged violation occurred or is occurring file suit for civil, injunctive, and/or other appropriate relief.

Added by Acts 1993, 73rd Leg., ch. 8, Sec. 1, eff. June 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 227, Sec. 20, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 463, Sec. 1.24, 2.13, eff. May 30, 1997.

Sec. 74.127. SUNSET PROVISION. (a) The board of directors

of the official cotton growers' boll weevil eradication foundation is subject to Chapter [325](#), Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished September 1, 2035.

(b) The commissioner may order the dissolution of the foundation at any time the commissioner determines that the purposes of this subchapter have been fulfilled or that the foundation is inoperative and abandoned. Dissolution shall be conducted in accordance with Section [74.112](#) of this code.

(c) If the foundation is abolished or the program discontinued for any reason, assessments approved, levied, or otherwise collectible on the date of abolishment remain valid as necessary to pay the financial obligations of the foundation.

Added by Acts 1993, 73rd Leg., ch. 8, Sec. 1, eff. June 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 227, Sec. 21, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 463, Sec. 2.14, eff. May 30, 1997; Acts 1997, 75th Leg., ch. 1169, Sec. 2.01, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1449, Sec. 3.02, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1227 (H.B. [1116](#)), Sec. 3.03, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 928 (H.B. [3249](#)), Sec. 2.03, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 178 (H.B. [1580](#)), Sec. 8, eff. May 27, 2009.

Acts 2021, 87th Leg., R.S., Ch. 848 (S.B. [703](#)), Sec. 24, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 941 (S.B. [1659](#)), Sec. 3.02, eff. June 18, 2023.

Sec. 74.128. ANNUAL REPORT. The board shall issue to the commissioner and the appropriate oversight committee in the house of representatives an annual report detailing its efforts to carry out the purposes of this subchapter.

Added by Acts 1997, 75th Leg., ch. 463, Sec. 1.25, eff. May 30, 1997.

Sec. 74.129. EXEMPTION FROM LAWSUITS, LIABILITY, TAXATION, AND LEGAL PROCESS. The legislature recognizes that the foundation, acting under the supervision and control of the commissioner, is carrying out an important governmental function and that therefore the foundation, as a quasi-governmental entity, must be immune from lawsuits and liability except to the extent provided in Chapter 101, Civil Practice and Remedies Code, and as provided by this section. Therefore, no claims may be brought or continued against the foundation except: (1) claims allowed by Chapter 101, Civil Practice and Remedies Code; and (2) claims pending against the foundation on April 30, 1997, plus attorney's fees and costs of court. With the exception of finally adjudicated claims arising from Chapter 101, Civil Practice and Remedies Code, and claims for assessments, attorney's fees, and costs of court paid by named plaintiffs in lawsuits pending on or before April 30, 1997, all payments, contributions, funds, and assessments received or held by the foundation under this subchapter are exempt from garnishment, attachment, execution, or other seizure and from state and local taxation, levies, sales, and any other process and are unassignable. Nothing in this section shall affect or impair any existing or future indebtedness or any existing or future security interest created under a note, security agreement, assignment, or other loan agreement between the foundation and a lender or any judgment, to the extent such judgment allows recovery against the foundation pursuant to a note, security agreement, loan agreement, or other document.

Added by Acts 1997, 75th Leg., ch. 463, Sec. 1.25, eff. May 30, 1997.

Sec. 74.130. USE OF BIO-INTENSIVE CONTROLS. (a) The commissioner shall develop and adopt rules to allow a cotton grower in an eradication program to use biological, botanical, or other non-synthetic pest control methods. In developing the rules, the commissioner shall consider:

- (1) scientific studies and field trials of the effectiveness of a proposed alternative control method;
- (2) the feasibility of using a proposed alternative

control technique within a particular region;

(3) the degree of monitoring necessary to establish the success of the use of a proposed alternative control; and

(4) methods to prevent the use of substances that would impede the use of alternative controls and the promotion of beneficial insect populations.

(b) A cotton grower that chooses to use an alternative method of control as provided in Subsection (a) shall notify the board. The board and the cotton grower shall coordinate their actions to prevent the use of substances that would impede the use of alternative controls and the promotion of beneficial insect populations.

(c) The cotton grower shall pay any additional cost of bio-intensive control in addition to any assessment.

Added by Acts 1997, 75th Leg., ch. 463, Sec. 1.25, eff. May 30, 1997.

Sec. 74.131. VENUE. (a) Venue for an action arising out of this subchapter in which the foundation is a party is in Travis County.

(b) This section does not expand the liability of the foundation beyond the liability provided under Section [74.129](#).

Added by Acts 1999, 76th Leg., ch. 286, Sec. 5, eff. May 29, 1999.

Sec. 74.132. COMPLAINTS. (a) The foundation shall maintain a system to promptly and efficiently act on complaints filed with the foundation. The foundation shall maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

(b) The foundation shall make information available describing its procedures for complaint investigation and resolution.

(c) The foundation shall periodically notify the complaint parties of the status of the complaint until final disposition unless the notice would jeopardize an investigation.

Added by Acts 2021, 87th Leg., R.S., Ch. 848 (S.B. [703](#)), Sec. 25,

eff. September 1, 2021.

SUBCHAPTER E. COST-SHARING FOR BOLL WEEVIL ERADICATION

Sec. 74.151. DEFINITIONS. In this subchapter:

(1) "Boll weevil" and "pink bollworm" have the meanings assigned by Section 74.002.

(2) "Commissioner" has the meaning assigned by Section 74.102.

Added by Acts 1999, 76th Leg., ch. 127, Sec. 1, eff. May 20, 1999.

Sec. 74.152. CREATION OF COST-SHARING PROGRAM. As part of the program to eradicate the boll weevil and the pink bollworm under this chapter, a cost-sharing program is created to be administered under this chapter and rules adopted by the commissioner.

Added by Acts 1999, 76th Leg., ch. 127, Sec. 1, eff. May 20, 1999.

Sec. 74.153. COST-SHARING PROGRAM REQUIREMENTS. (a) The commissioner may contract to obtain boll weevil eradication services for the state with the entity named under Section 74.1011.

(b) The department may spend money under the cost-sharing program only in a zone in which:

(1) a boll weevil eradication project under this chapter is active; or

(2) boll weevil eradication has been declared complete by the United States Department of Agriculture or its designee.

Added by Acts 1999, 76th Leg., ch. 127, Sec. 1, eff. May 20, 1999.

SUBCHAPTER F. MAINTENANCE PROGRAM FOR BOLL WEEVIL AND PINK BOLLWORM ERADICATION

Sec. 74.201. DEFINITIONS. The definitions provided by Section 74.102 apply to this subchapter.

Added by Acts 2005, 79th Leg., Ch. 119 (S.B. 1428), Sec. 3, eff. September 1, 2005.

Sec. 74.202. MAINTENANCE AREAS. (a) On the request of the

foundation and affected cotton grower steering committees, the commissioner by rule may designate boll weevil and pink bollworm eradication maintenance areas for the continued protection of the cotton industry. To the extent practicable, and to the extent consistent with Subsection (b), maintenance areas must follow the lines of existing eradication zones. Contiguous eradication zones eligible for inclusion in a maintenance area may be included in the same maintenance area. Additional counties not previously included in an eradication zone may be added to maintenance areas to prevent reinfestation or otherwise support the eradication efforts of the state on request of the foundation, if the county is contiguous with a maintenance area.

(b) An eradication zone is eligible for inclusion in a maintenance area if:

(1) the commissioner determines that the boll weevil has been functionally eradicated in that zone;

(2) the zone has satisfied any debt owed to the foundation;

(3) the cotton grower steering committee has been consulted regarding the inclusion of the zone in a maintenance area; and

(4) the foundation requests the inclusion of the zone in a maintenance area.

(c) To the extent consistent with this subchapter, Subchapter D applies to the activities of the department and foundation under this subchapter.

Added by Acts 2005, 79th Leg., Ch. 119 (S.B. [1428](#)), Sec. 3, eff. September 1, 2005.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 577 (S.B. [818](#)), Sec. 5, eff. June 14, 2013.

Sec. [74.203](#). MAINTENANCE FEES. (a) The commissioner by rule may impose a maintenance fee on all cotton grown or on all cotton acres in a maintenance area.

(b) The maintenance fee must be collected on a per-acre or per-bale basis at a rate to be set by the commissioner after

receiving a recommendation from the board. The board shall consult with cotton grower steering committees in formulating a recommendation to the commissioner under this subsection. The commissioner may accept, reject, or modify a board recommendation.

(c) The commissioner by rule may determine the method, manner, and mechanism by which maintenance fees are collected, including provisions for collection at central points in the cotton marketing process. The rules must provide for the fee collector to forward maintenance fees to the credit of the foundation.

(d) The amount of the maintenance fee must be based on:

- (1) the number of cotton acres in a maintenance area;
- (2) the potential for reinfestation from outside the maintenance area;
- (3) the growing season;
- (4) epidemiology;
- (5) historical weather conditions;
- (6) the expected costs of the maintenance program; and
- (7) the need for an adequate reserve to respond to potential reinfestations in a rapid, effective manner.

(e) The department shall hold one or more hearings regarding the amount and collection methods of a maintenance fee to be imposed under this section.

(f) Maintenance fees collected under this section are not state funds.

Added by Acts 2005, 79th Leg., Ch. 119 (S.B. [1428](#)), Sec. 3, eff. September 1, 2005.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 577 (S.B. [818](#)), Sec. 6, eff. June 14, 2013.

Sec. 74.2035. TRANSFER OF FUNDS BETWEEN ERADICATION ZONES AND MAINTENANCE AREAS. Notwithstanding any provision of this subchapter or Subchapter D, with the approval of the board and the commissioner, the foundation may transfer funds, including the proceeds from the collection of assessments or maintenance fees, between active eradication zones and maintenance areas as needed to fulfill the purposes of this subchapter and Subchapter D. The

board shall consult with affected cotton grower steering committees before recommending that the commissioner approve the transfer of funds under this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 577 (S.B. [818](#)), Sec. 7, eff. June 14, 2013.

Sec. 74.204. RULES. The department may adopt rules necessary for the implementation and operation of a maintenance program under this subchapter, including rules limiting the balance of maintenance fees that the foundation may carry over from year to year in the foundation budget.

Added by Acts 2005, 79th Leg., Ch. 119 (S.B. [1428](#)), Sec. 3, eff. September 1, 2005.