

Texas Pecan Board

BY-LAWS

Adopted On
February 19, 2019



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B Y - L A W S

Article I – Authority and Purpose

In August of 1998 Texas pecan producers petitioned the Texas Agriculture Commissioner and voted overwhelming to create the Texas Pecan Board (Board). The assessment referendum called for the creation of a nine-member board overseeing the ½ cent per pound assessment of pecans sold. The Board is governed by the Texas Agriculture Code, Title 3, Chapter 41. These By-Laws and Special Rules are promulgated to further define and outline the general and special rules governing the Texas Pecan Board and the Texas pecan industry.

It is in the interest of the public welfare of the State of Texas that the producers of pecans be permitted and encouraged **to develop, carry out, and participate in programs of research, disease and insect control, predator control, education, indemnification, and promotion designed to encourage the production, marketing, and use of pecans.**

The purpose of the Board is to serve public and producer interests of the State of Texas regarding pecan production by collecting and dispersing funds for pecan production research, promotion, marketing and education of pecans in the state of Texas.

The programs authorized by the Board may be devised to: **alleviate any circumstance or condition that serves to impede the production, marketing, or use of pecans in the state of Texas.**

Article II. General Rules

Section 1. Definition

For purposes of the Texas Pecan Board and these rules, a pecan producer is defined as a person who is engaged in the business of producing or causing to be produced for commercial purposes, pecan nuts with the intent of making an income, seeks to produce a healthy, wholesome food product, having 500 or more pecan trees on a minimum of 15 acres or that represents through a power of attorney, a bona-fide producer of pecans, having 500 or more pecan trees on a minimum of 15 acres, manages a pecan orchard with acceptable, sustainable practices, and harvests pecan nuts on a regular basis for sale in the marketplace. A pecan producer includes the owner of a farm on which pecans are produced, an owner's tenant, or sharecropper. A person means an individual, firm, corporation, association, or any other business unit.

Section 2. State Agency

The Board is a state agency for purposes of indemnification and is exempt from taxation in the same manner and to the same extent as are other agencies of the state.

The Board is a governmental unit for purposes of Section [101.001](#), Civil Practice and Remedies Code, and is a governmental body for purposes of Chapters [551](#) and [552](#), Government Code.

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Article III. Board Membership and Elections

Section 1. Membership

The Board is made up of nine-members elected by Texas pecan producers. According to Texas Agriculture Code, Board members shall serve 6-year terms.

1. Board members seeking election or appointment must be a pecan producer as defined with in these By-Laws.
2. Each newly elected Board member shall hold office for a 6-year term and/or until a successor is duly elected or appointed and sworn in.
3. Members of the Board serve without compensation, but are entitled to reimbursement for reasonable and necessary expenses incurred in the discharge of their duties.
4. Board members are expected to attend all board meeting and functions within reason. Board members absent from three (3) consecutive meetings will be subject to removal by a majority vote of the Board and a new member appointed by the Board to fill the unexpired term.

Section 2. Vacancies

The Board shall fill any vacancy by appointment for the duration of the unexpired term. Persons being considered for appointment must meet the Board member requirements as defined in these by-laws.

Section 3. Election of Board Members

The Board shall conduct biennial elections every even numbered year for the purpose of electing members to the Board. The Board shall give notice and hold the election in accordance with Chapter 41 of the Texas Agriculture Code.

The Board election shall be held in the month of August. For purposes of voting the Board shall send a ballot to all pecan producers in the State of Texas as can be reasonably determined through allied industry, Board members, prior assessment records or any means possible. Ballots must include the definition of a pecan producer, shall certify producers based on rules of the Board and accept ballots based on certification. Ballots shall be mailed to producers in August and must be returned by September 1 to the Executive Director.

Section 4. Nomination of Candidates

Potential candidates for the Board must notify the Executive Director by July 15 of the even numbered years when elections are held of their desire to be on the ballot for the Board. Potential candidates must be pecan producers as defined within the bylaws. Potential candidates will complete an application signed by the potential candidate and at least ten (10)

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producers eligible to vote in the election and return the application to the Executive Director by July 15.

Article IV. Board Officers

Section 1. Election of Officers

The Board shall elect officers to include a President, Vice President and Secretary/Treasurer. Officers will be elected biennially in conjunction with each Board election and will be selected by a majority vote of the Board present immediately after swearing in newly elected Board members. Board officers may serve one 2-year term in the office they currently hold, but may be elected to another office. Officers are entitled to serve as many terms or offices as they are elected as long as they only serve 2 years within each office.

Section 2. Officers

President

The President shall supervise and govern the affairs of the Board, the activities of the officers, appoint committees, coordinate Board projects with the Executive Director, develop agenda items with the Executive Director, and represent the Board at official functions, hearings or events. The President shall preside at all meetings of the Board when present and during such times the Board is not in assembly the President shall have the authority to authorize expenditures on behalf of the Board and oversee Board elections and all other duties not specified but necessary for Board function according to these Rules.

Vice-President

The Vice-President will act as the Presidents official designee, and in the absence of the President or in the event of his or her inability to carry out his or her duties, shall perform all the duties of the President.

Secretary/Treasurer

The Secretary/Treasurer shall keep records and minutes of each meeting held, as well as be the Board historian and recordkeeper. The Secretary/Treasurer shall deposit all money received by the Board including assessments, donations from persons, and grants from governmental agencies, in a bank selected by the Board. The secretary-treasurer of the Board, by registered or certified mail, shall notify each first handler of the duty to collect the assessment, the manner in which the assessment is to be collected, and the date on or after which the first handler is to begin collecting the assessment.

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Board Member Bond

The secretary-treasurer shall execute a corporate surety bond in an amount required by the Board. The bond shall be conditioned on the secretary-treasurer faithfully accounting for all money that comes into the custody of the officer. The bond shall be filed with the Texas Commissioner of Agriculture.

Article V. Meetings

Section 1. Meetings

The Board shall hold regular, public meetings to conduct business that benefits Texas pecan producers. Meetings will be held so that they can be easily attended by producers and allied pecan industry. The Board will hold a minimum of three (3) meetings per year, one held in late winter/spring, one in conjunction with the annual Texas Pecan Growers Association in July and one held in the fall. Other meetings may be scheduled based on need, emergency or to conduct specific business. A majority vote of all members present is necessary for an action of the Board to be valid.

The Board as a Texas state agency and governmental agency is required to follow the Open Meetings Act. Meeting announcements and meeting agendas will be posted in advance according to state law. The Board will additionally post meeting announcements, agendas and minutes on its official website www.TexasPecanBoard.com as well as officially with the Texas Department of Agriculture and Secretary of State.

Article VI. Board Powers and Duties

Section 1. Powers and Duties

The Board may employ necessary personnel, fix the amount and manner of their compensation, and incur other expenses that are necessary and proper to enable the Board to effectively carry out the purposes of the Texas Agriculture Code, Chapter 41.

The Board shall set the rate of the assessment. The rate may not exceed the maximum established in the referendum election held August, 1998 authorizing the assessment of ½ cent per pound of pecans or if held, a subsequent election establishing a maximum rate above ½ cent per pound.

The Board may act separately or in cooperation with any person in developing, carrying out, and participating in programs of research, disease and insect control, predator control, education, indemnification, and promotion designed to encourage the production, marketing, and use of pecans on which the assessment of ½ cent per pound is levied.

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Section 2. Executive Director

The Board shall appoint an Executive Director to oversee daily operation of the Board. The Executive Director shall work to carry out the functions of the Board and see that its operations fulfill the mission of the Board, meet the legal obligations required by the State of Texas, enforce the rules adopted by the Board, collect the required assessments from first handlers, and oversee programs planned and conducted by the Board.

Section 3. Annual Budget and Report

The Board shall file with the commissioner a proposed yearly budget and may expend funds only after the commissioner has approved the budget. If, after thorough review, the commissioner disapproves the proposed budget, the commissioner shall return the proposed budget to the Board not later than the 45th day after the date on which the proposed budget is submitted with a statement of reasons for disapproval.

Accounts of the Board are subject to audit by the state auditor. Within 30 days following the end of each fiscal year of the board (January through December), the Board shall submit to the commissioner a report itemizing all income and expenditures and describing all activities of the Board during the previous fiscal year.

Article VII. Assessments/Enforcement

Section 1. Assessments

The pecan First Handler (buyer, handler, or sheller) at a pecan buying point as determined by the Board shall collect the ½ cent per pound of pecans assessment and remit to the Board.

Unless the pecan producer is a sheller and/or retailer of shelled or inshell pecans, the pecan First Handler shall collect the assessment by deducting the appropriate amount from the purchase price of the commodity or from any funds advanced for that purpose.

If the pecan producer and First Handler are the same legal entity, or if the pecan producer retains ownership after shelling, the entity that shells the pecans shall collect the assessment directly from the pecan producer at the time of shelling the pecan nuts.

All assessments shall be recorded on the invoice and sales receipt and provided to the pecan producer. All assessments will be recorded on a Texas Pecan Board form and remitted to the Board by the 10th day of the month following the collection month.

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Section 2. Buyer/Handler/Sheller Notification of Assessment and Collection

The secretary-treasurer of the Board, by registered or certified mail, shall notify each First Handler registered with the Board of the duty to collect the ½ cent per pound of pecan assessment. The total amount of the assessment collected shall be clearly shown on the sales invoice and recorded on a First Handler Form supplied by the Board. The pecan producer shall be provided with a receipt showing that the assessments were deducted. All assessments collected by the First Handler within the month must be sent to the Board by the 10th day of the following month.

Section 3. Producer Exemption

Pecan producers with less than 500 trees on at least 15 acres are exempt from the 1/2 cent per pound assessment. The First Handler must have the pecan producer complete a Pecan Producer Exemption Form provided by the Board and return the Pecan Producer Exemption Form with the First Handler Form. All pecan producers, regardless of size, are encouraged to participate in the programs of the Board by sending in your assessments.

Section 4. Producer Refunds

Any pecan producer who has paid the 1/2 cent per pound of pecans assessment may obtain a refund of the amount paid by submitting a request to the Secretary/Treasurer or Executive Director within 60 days of the date of assessment payment. The request must include a receipt showing the name of the pecan producer selling the pecans, who purchased the pecans, the pounds of pecans sold, the assessment amount collected and the date of the sale. A refund will be mailed to the requesting pecan producer before the 11th day of the month following the month the refund was requested.

Section 5. Assessment Increase Procedures

At any biennial board election, the Board may submit to the voters a proposition to increase the 1/2 cent per pound maximum rate of assessment. The proposition is approved, and the new maximum rate is in effect, if two-thirds or more of those voting, vote in favor of the proposition or if those voting in favor of the proposition produced at least 50 percent of the volume of pecan production from the previous year's production of Texas pecans.

Section 6. Remedies and Penalties by the Texas Pecan Board for Failure to Collect Assessments

The Board may investigate conditions that relate to the prompt remittance of the assessment by any pecan producer or First Handler. If the Board has probable cause to believe that a person has failed to collect the 1/2 cent per pound of pecans assessment or failed to remit to the Board an assessment as required by these rules, the Board may:

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1. Independently institute proceedings for recovery of the amount due to the Board or for injunctive or other appropriate relief;
2. Request the attorney general, or the county or district attorney having jurisdiction, or both, to institute proceedings in the Board's behalf; or
3. Forward to the Texas Department of Agriculture for action a complaint and any original evidence or other information establishing probable cause.
 - a. Suit under this section may be brought in Travis County or a county in which the person who is alleged to have failed to collect or remit an assessment conducts business related to pecans subject to the uncollected or unpaid assessment.
 - b. The remedies provided by this section are cumulative of other remedies provided by law.

Section 7. Action by the Texas Department of Agriculture

On receipt of a complaint from the Board, the department may investigate, audit, and inspect the records of the person who is the subject of the complaint, provided that any audit or inspection must take place during normal business hours.

On determination by the department that a person has failed to collect an assessment or failed to remit to the Board an assessment collected from a pecan producer, the department may:

1. request a hearing under Section 12.032 of the Texas Agriculture Code to determine the amount of payment due to the board, including interest at an annual rate of 10 percent, and issue an order that the person pay the required amount to the Board;
2. impose an appropriate administrative penalty; and
3. request the attorney general or a county or district attorney having jurisdiction to bring an action for appropriate civil or criminal penalties or injunctive relief.
4. The attorney general may bring a civil action to enforce an order of the department and collect any amounts owed under the order, including costs and fees outlined in subsection 5 of this Section.
5. On prevailing in an action commenced by the department through the attorney general or a county or district attorney under this section, the department and the attorney general or county or district attorney are each entitled to recover, in addition to other relief available:
 - a. investigation costs and fees;
 - b. reasonable attorney's fees; and
 - c. court costs.
6. Suit under this by the department may be brought in Travis County or a county in which the person who failed to collect or remit an assessment conducts business related to the commodity subject to the uncollected or unpaid assessment.

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7. An assessment and any interest collected under this section shall be deposited in the account of the Board that levied the assessment.
8. The remedies provided by this section are cumulative of other remedies provided by law.

Section 8. Suspension or Revocation of License

In addition to other remedies provided by law, a violation of any provision of these rules is grounds for suspension or revocation of any license or permit issued by the Texas Commissioner of Agriculture. The suspension or revocation shall be conducted in accordance with the procedures provided by law for suspension or revocation on the basis of other grounds.

Section 9. Expense of Assessments

Funds assessed and collected by the Board may not be expended for use directly or indirectly to promote or oppose the election of any candidate for public office or to influence legislation.

1. A member of the Board commits an offense of these rules if the member: willfully spends or assists in spending money in violation of the above rules or rules of the State of Texas for boards.
2. Without causing or attempting to cause his or her dissent to be entered in the records or minutes of the Board, participates in a meeting or session of the Board in which money is authorized or directed to be expended in violation of these rules or rules of the State of Texas for boards.
3. An offense of these rules or the rules of the State of Texas for boards is a misdemeanor punishable by a fine of not less than \$100 nor more than \$1,000.

Adopted by the Texas Pecan Board on February 19, 2019.