

SUBJECT: Continuing the Texas Animal Health Commission

COMMITTEE: Agriculture and Livestock — committee substitute recommended

VOTE: 8 ayes — Patterson, R. Cuellar, Finnell, Hawley, King, Rusling, Swinford,
Walker

0 nays

1 absent — Rabuck

WITNESSES: *(On original bill)*

For — Jim Selman and 11 others representing the Independent Cattlemen's Association of Texas; Ross Wilson, Texas Cattle Feeders Association; Ed Small, Texas and Southwestern Cattle Raisers; Jerry Clark, Associated Milk Producers, Inc.; Ken Horton, Texas Port Producers Association; Durwood Tucker, Texas Farm Bureau; Donald M. Ward, Texas Veterinary Medical Association; six ranchers

Against — Larry Mack

On — Donald De Jong, Texas Association of Dairymen; D. Keith Chapman, Livestock Marketers Association of Texas; Terry Beals, Texas Animal Health Commission

BACKGROUND: The Texas Animal Health Commission (TAHC) is responsible for the control and eradication of infectious or contagious livestock and poultry diseases. The commission performs its duties by concentrating on the prevention, surveillance, diagnosis, control and eradication of diseases.

The commission has 12 members appointed by the governor with the advice and consent of the Senate. Members serve staggered six-year terms. Two members are public members and 10 members represent different areas of the livestock industry.

For fiscal 1994-95 the commission received about \$18.2 million in state general revenue and federal funds of about \$5.9 million.

The commission is subject to the Sunset Act and underwent Sunset Advisory Commission review during the past interim. The TAHC will be abolished September 1, 1995, unless continued by the Legislature.

DIGEST:

CSHB 2245 would continue the Texas Animal Health Commission until September 1, 2007, authorize TAHC to impose administrative penalties, enter into agreements to use Texas Department of Agriculture export livestock pens and regulate exotic livestock and exotic fowl diseases and require a review of agency services that are also provided by the private sector.

The bill would make other changes including requiring, instead of authorizing, the commission to adopt forms for livestock dealers to record transactions and would include standard Sunset Advisory Commission recommendations on legislative review of agency funds, financial reporting, complaint information, compliance with state and federal accessibility laws, open meetings and training for commission members. CSHB 2245 would take effect September 1, 1995.

Administrative penalties. CSHB 2245 would authorize TAHC to impose administrative penalties up to \$1,000 per violation per day against persons who violate a rule or order of the commission. The bill would require that the penalties be based on factors such as the seriousness of the violation, economic harm, history of violations, amount needed to deter future violations, efforts to correct the violation and any other matter. CSHB 2245 would establish guidelines for administrative review of the penalties. All proceedings would be subject to the Administrative Procedure Act.

Use of TDA export pens. CSHB 2245 would authorize TAHC to enter into cooperative agreements with the Texas Department of Agriculture to use TDA's livestock export pens for animal health purposes and require TDA to enter into any agreement initiated by TAHC.

Regulating exotic livestock and exotic fowl. CSHB 2245 would authorize TAHC to regulate and apply commission rules to exotic livestock and exotic fowl diseases.

Review of agency services. The TAHC would be required to consult with the Council on Competitive Government to periodically review its services that are also provided by the private sector to determine the most cost-effective means of the service delivery.

The bill would take effect September 1, 1995.

**SUPPORTERS
SAY:**

The Texas Animal Health Commission should be continued and the commission given authority to regulate exotic livestock and exotic fowl and to impose administrative penalties. A few changes recommended by the Sunset Advisory Commission are needed to include and update commission across-the-board recommendations.

TAHC is needed to continue to combat livestock diseases. The livestock industry is important to Texas, accounting for 58 percent of cash receipts, about \$9.1 billion, for agricultural commodities in fiscal 1993. TAHC should remain an independent agency because it serves a unique function by focusing exclusively on the prevention, control and eradication of livestock diseases. Transferring the TAHC's functions to another agency would save little if any in administrative or staffing costs and could result in a loss of focus on animal diseases. Eliminating the commission could result in restrictions on the export of Texas livestock and a loss of federal funds. The TAHC could play an increasingly important role in international trade with recent federal approval of the North American Free Trade Agreement (NAFTA) and the General Agreement on Tariffs and Trade (GATT).

Administrative penalties. The commission's current enforcement authority — obtaining court-ordered injunctions and seeking civil and criminal causes of action in courts — is inadequate to deter persons from repeatedly violating the commission's rules and regulations. Administrative penalties would authorize TAHC to go after violators but would not affect the vast majority of persons who follow the laws and regulations. Administrative penalties would allow TAHC more flexibility and more options to deal with

violators. The commission sought court action on 193 of the 1,354 investigations of violators requested from fiscal 1989 to 1993. Court actions are often lengthy and can hamper efforts to take quick action to control and eradicate livestock diseases. The appeal of administrative penalties can be done without an attorney, often a necessity in court actions. Administrative fines would be appropriate penalties for many of the violations, especially the increasing number being handled by warning letters.

CSHB 2245 would authorize TAHC to impose administrative penalties similar to the authority given to other regulatory agencies. CSHB 2245 would also ensure that there would be a fair administrative review process for the penalties and that the TAHC set guidelines to determine penalties.

Use of TDA export pens. CSHB 2245 would authorize TAHC to enter into agreements with the Texas Department of Agriculture for use of TDA's export pens on the Texas-Mexico border that are used for inspecting animals to ensure they meet export requirements. These pens sometimes go unused, and it could be an efficient and appropriate use of the facilities for TAHC to use them to quarantine animals coming into Texas. TAHC should be able to use all available tools to protect the public and the industry. CSHB 2245 only allow TAHC to enter into agreements to use the pens, not require it. The TAHC is concerned with controlling and eradicating infectious diseases and would not use the pens if it would spread livestock diseases or endanger export animals.

Regulating exotic livestock and exotic fowl. As the exotic livestock and fowl industry has grown in Texas it has become necessary to extend the commission's authority to regulate their diseases. Diseases such as brucellosis, tuberculosis and avian influenza have been found in exotic livestock and fowl, and these and other exotic livestock diseases can be transmitted to wild animals such as deer and quail. Regulation of these diseases is important to the livestock industry and the public. The commission has some authority concerning exotic livestock and fowl, and CSHB 2245 would give it authority to deal with the control and eradication of diseases in exotic animals similar to its authority for traditional livestock diseases. CSHB 2245 would authorize the TAHC to establish advisory

committees for the regulation of exotic livestock and fowl to ensure that the industry would have input into any regulations or rules.

Cost-recovery fee schedule. The functions performed by the TAHC differ from those performed by other agencies that recover costs by charging fees. Other agencies may charge fees for specific services performed for a person or entity. But the TAHC's disease control and eradication efforts are of value to the whole industry and to consumers, not just individual livestock owners, and it would be unfair to have just a few individuals pay for these benefits. A cost-recovery fee schedule would be particularly unfair to livestock owners who are required to have their animals tested because of a regulation or because neighboring animals may have a disease. Other tests are required by federal law and are paid for when animals are sold through markets, and owners should not have to pay the state again for these tests.

Registration of livestock dealers. There is no need to impose an additional burden and an additional fee on livestock dealers to register with the commission. Federal requirements as well as state authority to require dealers to maintain records of transactions are adequate to trace the origin of diseased animals.

OPPONENTS
SAY:

Administrative penalties. The TAHC's current enforcement authority is adequate to respond to violations of laws and regulations. Violators can be prosecuted through the courts, and court injunctions can be issued. The commission could impose excessive and unnecessary penalties and could too readily turn to administrative penalties instead of working with livestock owners to clear up violations.

Use of TDA export pens. Allowing the TAHC to use export pens as quarantine pens could cause problems with other animals in the facility. Those that pass through the facility later could become infected.

Cost-recovery fee schedule. The TAHC already has authority to charge some fees and should be authorized to charge fees to cover agency services. In recent years the Legislature has shown interest in requiring agencies to use fees to replace or supplement general revenue funding and in 1993 required the TAHC to study the idea. The comptroller and the Legislative Budget Board have recommended a fee-based cost recovery system for the

agency. In addition, federal funds received by the commission for the bovine brucellosis program could be reduced. If a cost-recovery fee system were adopted the agency could be given authority to exempt specific programs for the requirement.

Registration of livestock dealers. Livestock dealers should be required to register with the TAHC to ensure diseased animals can be traced back to their herd or flock of origin. Current requirements do not ensure dealers are accurately identified and easily located. Requiring an initial registration and subsequent updates would have little effect on livestock dealers who often are required to register in other states.

NOTES:

The committee substitute eliminated authority for the commission to set and collect fees to cover the costs of disease-control programs and eliminated commission authority to require livestock dealers to register with the TAHC.

The companion bill, SB 370 by Sims and Armbrister, has been referred to the Senate Natural Resources Committee.