

SUBJECT: Continuing the Department of Agriculture

COMMITTEE: Agriculture and Livestock — favorable without amendment

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

0 nays

1 absent — Rabuck

SENATE VOTE: On final passage, April 24 — by voice vote

WITNESSES: (*On House companion bill, HB 2282*):

For — Ray Prewett, Texas Citrus Mutual; Jerry A. Walzel, The Texas Citrus and Vegetable Association; Billy L. Conner, Texas Ag Cooperative Council; William Beardall, Farm Worker Clients of Texas Rural Legal Aid; Richard Lowerre; Durwood Tucker, Texas Farm Bureau; Robert H. Putz, Jr., Rick Hardcastle, Texas Agricultural Aviation Association; Susan S. Pitman, The Chemical Connection; Reggie James, Consumers Union; Rebecca Harrington; Scott Royder, Sierra Club

Against — None

On — Cyndie Schmitt, Sunset Advisory Commission

BACKGROUND: The Texas Department of Agriculture (TDA) is responsible for the promotion and regulation of agriculture in Texas. TDA promotes Texas products, funds new and existing agricultural businesses, regulates pesticides and their agricultural use and enforces quality standards for some agricultural products. The commissioner of agriculture is a statewide elected official.

For fiscal 1994-95 the department received about \$39.1 million in state general revenue funds and other funds including federal funds of about \$8.6 million.

**Agriculture Resources Protection Authority.** The Agriculture Resources Protection Authority (ARPA) was created in 1989 to coordinate state pesticide regulation. ARPA is a nine-member board composed of the commissioner of agriculture who is the chair, the director of the Texas Agricultural Experiment Station, the dean of the Texas Tech University College of Agricultural Sciences, the dean of the University of Texas School of Public Health at Houston, the director of the Texas Department of Health environmental epidemiology program, the chief of the Texas Natural Resource Conservation Commission groundwater conservation section, the director of the Prairie View A&M University Institute of Agribusiness Studies, and two members appointed by the governor to represent consumers and producers.

ARPA has oversight over the pesticide activities of the Department of Agriculture, the State Soil and Water Conservation Board, the Agriculture Extension Service, the Department of Health, the Texas Natural Resource Conservation Commission and the Structural Pest Control Board. ARPA is authorized to address overlapping pesticide regulation programs and to review and approved pesticide rules and hear appeals from the agencies it oversees.

**The Texas Agricultural Finance Authority.** The Texas Agricultural Finance Authority was created to administer several agricultural finance programs. The programs provide financial assistance for the expansion, development and diversification of production, processing, marketing and export of Texas agricultural products. Different programs allow TAFA to may make or guarantee loans to agricultural businesses or persons to buy land, equipment, supplies and to perform research and development in connection with the production, processing and marketing and export of Texas agricultural products.

TAFA has oversight over the TAFA Loan Guaranty Program, the Young Farmer's Loan Guaranty Program and the Farm and Ranch Finance Program. TAFA shares oversight with the commissioner of agriculture over the Agricultural Diversification Grant Program and the Rural Microenterprise Loan Program. The commissioner of agriculture has sole oversight over the linked deposit program.

**DIGEST:**

SB 372 would continue the Texas Department of Agriculture until 2007, require the department to recover regulatory costs through fees, change the duties of the Agriculture Resources Protection Authority, and transfer the administration of all agricultural finance programs to the Texas Agricultural Finance Authority. The bill would make other changes including transferring TDA hearings to the State Office of Administrative Hearings, allowing the privatization of the inspection of weighing and measuring devices, and requiring TDA to enter into a memorandum of understanding with the health department for the regulation of eggs.

The bill would make other changes including standard Sunset Advisory Commission recommendations on legislative review of funds, compliance with federal and state accessibility laws, complaint information, open meetings and administrative procedure law and public information.

SB 372 would take effect September 1, 1995.

**Cost-recovery fee schedule.** SB 372 would remove statutory fee limits on regulatory fees and require TDA to set fees to fully recover program costs. Exceptions could be made for activities exempted in the appropriations bill. The changes would apply to fees that are due on or after September 1, 1996.

**Agriculture Resources Protection Authority (ARPA).** *Board composition.* SB 372 would add the following members to the ARPA board:

- the executive director of the Structural Pest Control Board;
- the executive director of the State Soil and Water Conservation Board;
- a person appointed by the governor and licensed by TDA who is a commercial, noncommercial or private applicator;
- a person appointed by the governor and licensed by TDA who is a pesticide dealer or involved in the development or manufacture of agriculture chemicals;
- a person appointed by the governor and employed as a farm worker or serving as a representative of farm workers; and
- a person appointed by the governor and associated with an environmental conservation or protection organization.

All gubernatorial appointments to ARPA would be subject to Senate confirmation. The presiding officer of ARPA would be appointed by the governor rather than automatically being the commissioner of agriculture.

*Duties.* The current authority of ARPA to approve, disapprove, amend and repeal rules would be eliminated; it would instead be authorized to review and make comments on pesticide rules. Other ARPA authority would be eliminated including hearing and determining appeals from agency orders and exempting any federal or state agency from regulatory provisions if emergency conditions exist.

ARPA would be required to review the penalties used by the agencies to enforce pesticide regulation and submit a plan to the governor, lieutenant governor and the speaker of the House for making the penalties consistent across the agencies.

ARPA would be required to adopt rules requiring quarterly submission of reports on pesticide regulatory enforcement activities of the agencies it oversees (TDA, the State Soil and Water Conservation Board, Agricultural Extension Service, Department of Health, Texas Natural Resource Conservation Commission, and the Structural Pest Control Board). ARPA would have to review the reports, make comments and make the comments available to the public. The agencies would have to give ARPA an opportunity to review and comment on their strategic plans and biennial appropriation request before submission to the Legislature.

SB 372 would eliminate a current requirement that action taken by ARPA be approved by a concurring vote of a majority of the total membership of the authority.

ARPA would be required to develop and implement policies to give the public opportunity to appeal before the authority semiannually and comment on the state's pesticide regulation.

**Texas Agricultural Finance Authority.** SB 372 would transfer the administration of agricultural finance programs from the commissioner of agriculture to the TAFA board.

Instead of the current requirement that at least one, but not more than two, of the seven appointed members of the TAFA board be elected or appointed city or county officials, representatives of lending institutions who are knowledgeable about agricultural lending, representative of agriculture business and representative of agriculture entities, the appointed members would have to be:

- an elected or appointed city or county official;
- four who are knowledgeable about agricultural lending practices;
- one who is a representative of agricultural businesses; and
- one who is a representative of agriculture related entities.

The TAFA board would be required to provide training to the appointed board members to prepare them for board membership.

If SJR 51 or HJR 92, which would increase the amount of general obligation bonds available for Texas Agricultural Fund, fail to adopted by the Legislature or to be approved by the voters, SB 372 would reduce the maximum loans or guarantees under the TAFA loan and loan guarantee program. The maximum amount of a loan or a guarantee to a single agricultural business would be reduced from \$2 million to \$1 million. On a two-thirds vote of the board, a loan or guarantee could go up to \$2 million, down from the \$5 million permitted under current law.

TAFA would be able to make or guarantee an additional loan to a business that already has one, subject to the loan limits, if approved by a two-thirds vote of the members present. TAFA would be prohibited from guaranteeing more than 90 percent of a loan made by a private lender to an eligible business.

TAFA would be required to give preference to loans and guarantees to value-added agricultural businesses, except for loans given under the farm and ranch finance program and the agricultural diversification and microenterprise support program. TAFA would be able to decline to give financial assistance to businesses whose primary purpose is to establish or expand conventional agricultural production.

The TAFA board would be required to do a biennial cost-benefit study of its programs and report to the state auditor on the study. The state auditor would be required to comment on the study's methodology and send the report and the comments to the Legislature by February 1 of each odd-numbered year.

TDA would be required to give the TAFA board an opportunity to review and comment on the department's strategic plan and biennial appropriation request that are related to the finance programs. The administrators of the young farmer loan guarantee program, the farm and ranch finance program and other finance programs would be required to submit proposed annual budgets to the TAFA board, which would have to file them with the governor and the legislature.

SB 372 would authorize the board to adopt rules for the linked deposit program for determining priorities for loans such as to achieve adequate geographic distribution of loans, assist certain industries, encourage certain practices such as water conservation and to encourage value-added processing

**Administrative hearings.** SB 372 would transfer TDA's hearings functions to the State Office of Administrative Hearings and allow the TDA commissioner to retain final authority over decisions made by the administrative law judges. This would apply to hearings that begin on or after January 1, 1996. This requirement would not apply to produce recovery fund hearings.

**Inspection of weighing and measuring devices.** SB 372 would authorize TDA to license persons or allow other state agencies to inspect weighing and measuring devices, if current similar efforts prove effective. The bill would establish criteria for issuing, denying, suspending and revoking licenses and would authorize TDA to monitor and inspect scales inspected and tested by license holders. Before licensing inspectors TDA would have to demonstrate to the Legislative Budget Board (LBB) that its programs to license persons to inspect and test liquefied petroleum gas meters and ranch scales will meet the LBB's performance goals.

**Egg regulation.** SB 372 would require TDA to enter into a memorandum of understanding with the Department of Health to coordinate regulatory programs and eliminate conflicting regulatory requirements and inspection standards. The bill would eliminate a requirement that TDA annually publish a report on the movement and sale of eggs and of the official egg inspections and that egg inspection rules adopted and enforced by TDA be approved by the attorney general.

Retailers selling eggs to the ultimate consumer would be exempt from licensing requirements.

**Miscellaneous.** SB 372 would make other changes including:

- allowing the governor to appoint the chair of some agricultural boards, instead of the board members electing the chair, including the chairs of the Agricultural Finance Authority and the State Seed and Plant Board, and subjecting agricultural boards to standard Sunset Advisory Commission recommendations including the conflicts of interest, the open meetings and administrative procedure act;
- requiring pesticides to be registered every two years instead of annually and allowing TDA to adopt a system of staggered renewal dates;
- exempting from the pesticide registration requirements pesticides that are exempt from registration with the federal Environmental Protection Agency. TDA could override this exemption by department rule;
- allowing the adoption of staggered expiration dates of licenses;
- allowing TDA to waive licensing or registration prerequisites for applicants who hold a valid license from another state that has substantially equivalent requirements;
- establishing procedures and fee structures for expired license renewals and registration and
- requiring TDA to implement a consolidated license for program for grocer's licenses.

SB 372 would eliminate some TDA programs and regulations including:

- regulation of butterfat testers;
- standards for the net weight and labeling of flour and cornmeal;
- requiring the appointment of a chief deputy of weights and measures;
- agricultural warehouses regulations;
- the farmer's market nutrition program;
- antifreeze regulation;
- authority for agricultural development corporations;
- registration of cotton classers and
- brake fluid certification.

**SUPPORTERS  
SAY:**

The Texas Department of Agriculture should be continued and given authority to recover regulatory costs through fees. The duties of the Agriculture Resources Protection Authority should be redefined so that it can provide overviews of state pesticide regulation and the Texas Agricultural Finance Authority should be given authority over all agricultural finance programs.

TDA is needed to continue to promote and regulate agriculture in Texas. The state's interests would suffer without a central agency to oversee and promote agriculture, and there are no workable alternatives to combining TDA with another state agency.

**Cost-recovery fees schedule.** Requiring TDA to recover fees for regulatory programs would be consistent with legislative direction given to many state agencies and programs and would give TDA the necessary authority to comply with a legislative mandate that it recover regulatory costs. TDA's fiscal 1993 appropriation included a rider that required the department to recover at least 60 percent of regulatory costs, with certain activities exempt, and both the House and Senate versions of the fiscal 1996-97 appropriations bill would increase the percentage to 100 percent, beginning September 1, 1996. In 1994 cost recovery averaged about 77 percent for all programs.

Current law sets some TDA regulatory fees and sets caps on others. This results in some programs paying more than the cost of their regulation and some paying less. SB 372 would allow these fees to be set on a more



equitable basis so that activities support themselves. SB 372 would allow exceptions to the cost-recovery requirement to be made in the appropriations bill to ensure that cost-recovery is not required where it is inappropriate, such as in predator management, quarantine enforcement and farm worker right-to-know activities.

**Agriculture Resources Protection Authority (ARPA).** Oversight of the numerous agencies that regulate pesticides is necessary, but ARPA's duties should be redefined. Because of questions about the legality of ARPA's authority to approve agency rules and to hear appeals of agency orders, its duties should be focused on reviewing and commenting on agency rules, enforcement efforts, appropriations requests and strategic plans. This would provide needed oversight and coordination and would give the Legislature a source for information on the state's overall pesticide regulation.

It is necessary to add members to ARPA to ensure broad representation and a balance of interests in pesticide regulation oversight.

**Texas Agricultural Finance Authority.** SB 372 would give TAFE oversight over the linked deposit program, the agricultural diversification program and the rural microenterprise loan program so that it would have authority over all agricultural finance programs. This would allow TAFE to set uniform policy and direction for all the programs and to have the full range of programs under its directions to better serve the needs of program applicants.

Lowering the loan limits if more general obligation bonds are not made available would reduce the potential loss to TAFE from any one business and would help ensure funds are available for businesses. Setting a limit of 90 percent on loan guarantees would ensure that loan recipients have an equity interest in the business.

Changing the composition of TAFE to include four members with agricultural lending experience and including training for board members would enhance TAFE's ability to make sound lending and investment decisions.

Requiring loan priorities for the linked-deposit program would ensure an emphasis on loans to the value-added processing industry and that the loans are distributed throughout the state. This could help expand the value-added industry and help agricultural profits to stay in Texas.

Requiring TAFE approve and file budgets with the governor and the Legislature for finance programs would ensure oversight of the programs. SB 372 would also give TAFE formal input into the finance-related portions of TDA's strategic plans and appropriation requests.

OPPONENTS  
SAY:

SB 372 could result in skyrocketing fees to those regulated by TDA, make ARPA unwieldy and unnecessarily restrict some of the TAFE programs.

**Cost-recovery fees schedule.** Allowing TDA to set fees with no statutory limits or guidelines could result in large, unfair fee increases to some regulated activities. Some of these activities benefit a segment of an industry, the whole agriculture industry or consumers, not just the individuals who are regulated. It would be unfair to have a few individuals pay for these benefits. Cost recovery also could unfairly result in certain classes of licensees within a broad category of regulation having to pay more than their share so the whole category would result in cost recovery.

It would be more appropriate for the Legislature to set a statutory cap that would cover current costs and leave room for increases if necessary. This would give TDA authority and flexibility to recover costs while maintaining legislative oversight of the fees.

**Agriculture Resources Protection Authority.** Expanding the ARPA board is unnecessary and would make it too large and unwieldy. It was never designed to represent all interests.

**Texas Agricultural Finance Authority.** The current level of loan guarantees should not be lowered, even if the amount of bonds that may be issued is not increased. The Legislature just raised the cap in 1993 to help meet the large capital requirements of some agricultural processing businesses. TAFE should have the discretion to decide what level to fund a loan without an unreasonably low cap. TAFE should be given authority

to override the requirement that guarantees not be made for more than 90 percent of a loan.

Setting priorities for the linked deposit program could deny loans to businesses it was designed to help and could result in delays in evaluations of applications. Current law requires applicants for the program to be in process and marketing, producing alternative crops, producing crops which have declined due to a natural disaster or crops using water conservation equipment. Forcing geographic diversity in the loans could unfairly result in the denial to an otherwise qualified business simply because of where a business is located.

TAFA board members should not have to undergo special training because their qualifications and experience should be considered by the governor when they are appointed.

OTHER  
OPPONENTS  
SAY:

**Agriculture Resources Protection Authority.** The role of ARPA in pesticide regulation oversight should be strengthened. Agencies should be under some obligation to follow ARPA comments or to explain deviations from the recommendations.

ARPA should be given staff so that it can effectively carry out its duties.

**Transfer of state farm worker right-to-know law.** The enforcement of the farm worker Right-to-Know laws (Agricultural Hazard Communication Act) should be transferred to the Texas Department of Health to ensure there is no conflict of interest between TDA's interest in promoting agriculture and regulating pesticides and the interests of farm workers.

**Pesticide regulation.** The regulation of pesticides should be transferred to another state agency such as the Department of Health or the Texas Natural Resource Conservation Commission to avoid a conflict of interest with the departments charge to promote agriculture.

TDA should be required to produce annual statistical reports on its pesticide programs including information on pesticide use, complaints, inspections, testing and enforcement actions.

**Integrated Pest Management.** TDA should be required to include principals related to integrated pest management in all its programs and activities relating to the control of pests and diseases and the use of pesticides.

**Advisory committees.** Advisory committees should be established to assist TDA in the promotion of direct marketing and in the promotion of markets for new or non-traditional agricultural products.