

SUBJECT: Limiting liability for agricultural improvements on agricultural land

COMMITTEE: Agriculture and Livestock — favorable, without amendment

VOTE: 5 ayes — Patterson, Flores, Hupp, Roman, B. Turner
0 nays
4 absent — Swinford, Cook, Oakley, Rabuck

WITNESSES: For — Bill Powers, Texas Farm Bureau; Ed Small, Texas and Southwestern Cattle Raisers Association
Against — None

DIGEST: HB 2945 would establish that, under certain conditions, owners, lessees, or occupants of agricultural land could not be held liable for the construction or maintenance of agricultural improvements on their land to the state, a government unit or the owner, lessee or occupant of other agricultural land. The bill would also specify that an agricultural improvement would not constitute a nuisance.

The bill would define agricultural land as land that would qualify as agricultural land for ad valorem tax purposes. Agricultural improvements would include pens, barns, fences, and other improvements designed for sheltering, restricting, or feeding animals or aquatic life, as well as structures for storing and maintaining produce, feed or implements.

The limit on liability for agricultural improvements would not apply if the construction were expressly prohibited by a law or governmental requirement in effect at the time the improvement was built; if the improvement obstructed the flow of water, air or light to other agricultural land; or if the improvement prevented enforcement of a statute or governmental requirement to protect public health or safety.

The bill would take immediate effect if finally approved by a two-thirds record vote of the membership in each house.

SUPPORTERS
SAY:

HB 2945 would protect the private property rights of agricultural landowners by ensuring that they could build fences, barns and make other improvements to their property without fear of nuisance lawsuits concerning the construction and maintenance of those improvements. The bill is narrowly drawn so that those who make agricultural improvements would not be immune from liability if the improvement obstructed the flow of air, water or light to other agricultural land, presented a threat to public health and safety, or were expressly prohibited by statute or government requirement.

Over the years the private property rights of farmers and ranchers have been diminished by state and local requirements and encroaching urbanization. Some farmers have been the target of expensive and time consuming nuisance lawsuits when they attempt, for example, to build a barn on their own property. HB 2945 would help to shield them from this kind of harassment and allow them to make simple and necessary improvements to their land. The bill would not give agricultural landowners any greater authority to make improvements to their land, but it would protect the rights they already hold.

HB 2945 would not shield those making agricultural improvements from nuisance lawsuits regarding the *use* of their land or buildings. It would merely shield them from liability for the *construction or maintenance* of an agricultural improvement. A landowner could be held liable in a private nuisance action for odors arising from the operation of a feedlot, for example, since the plaintiffs would be objecting to the use of the building rather its construction or maintenance.

OPPONENTS
SAY:

HB 2945 would diminish the property rights of farmers and ranchers and other owners of agricultural land who live next to a person who makes an “agricultural improvement” that adversely affects the use and enjoyment of their property. Under the bill, even if the construction or maintenance of an improvement interfered with the rights of neighboring landowners to make reasonable use of their property, they would be discouraged from taking legal action since the person making the the improvement would, in many cases, be shielded from liability. Farmers and ranchers already have the right to construct fences, barns and sheds and make other improvements to their property, and there is no need to carve out a special statutory exemption for them.

The bill would shield landowners from liability stemming from *maintenance* of an agricultural improvement, which could be construed as shielding them from legal actions arising from the *use* of the structure as well. It would be futile to file a private nuisance action due to an odor emanating from a newly constructed poultry barn or feedlot, for example, unless it could be proved that the odor was threatening health and safety. Thus the bill could interfere with a neighbor's common law right to bring a nuisance lawsuit against a feedlot, fish farm, or poultry farm operator who moved nearby.

Although the bill provides that landowners would be shielded from liability only if the improvement were not expressly prohibited by statute or rule, few statutes or ordinances *expressly* prohibit construction of specific agricultural structures. This would either allow agricultural landowners to construct almost anything they wanted and escape liability or force enactment of detailed new regulations covering every contingency.

The bill could also affect residents of urban areas since land eligible for appraisal as agricultural land under the Tax Code can be inside the corporate limits of a city under certain circumstances. Since property taxes for agricultural land are calculated on the production rather than the market value of the land, many seek to have their land appraised as agricultural land, even in urban areas.

OTHER
OPPONENTS
SAY:

To protect neighboring landowners, the bill should specify that an agricultural improvement could not degrade, as well as obstruct, the flow of water, air or light to other agricultural land.

NOTES:

The companion bill, SB 1459 by Armbrister, is pending in the Senate Natural Resources Committee.

A related bill, HB 525 by Swinford, which would provide that certain agricultural operations could not be considered a nuisance for damages or injunctive relief if they were engaged in generally accepted agriculture practices, and make those who filed nuisance complaints potentially liable for investigation costs, was left pending in the House Agriculture and Livestock Committee.