

SUBJECT: Repealing and amending portions of the Agriculture Code

COMMITTEE: Agriculture and Livestock — committee substitute recommended

VOTE: 5 ayes — Hardcastle, B. Brown, D. Jones, Laney, Swinford

0 nays

2 absent — Miller, Burnam

WITNESSES: For — None

Against — None

On — Susan Combs, Texas Department of Agriculture

BACKGROUND: Agriculture Code, chapter 12 requires the Texas Department of Agriculture (TDA) to conduct farmers' institutes at times and places throughout the state as necessary to promote agricultural knowledge. TDA must investigate and report on grasses and their value, collect and publish information about forestry, encourage the planting of nut trees, and recommend legislation necessary to protect and preserve forests.

TDA must "inquire" into stock raising, dairying, the breeding and rearing of domestic animals and fowls, and the production, marketing, and manufacture of silk. The department must "encourage" the culture of bees and the development of an aquaculture industry and must "investigate and report" on sheep raising and wool production. TDA also must help create and operate "shared foreign sales corporations" in the same manner and with the same powers and duties as the Texas Department of Economic Development under Government Code, chapter 481.

Agriculture Code, chapter 13 prescribes the regulation of weights and measures. Sec. 13.005 requires TDA to "investigate" weights and measures and the sale of goods by weight or measure and to report regularly to the governor and Legislature on these investigations.

TDA must “maintain a complete record of all acts performed” under this chapter, including inspections made and prosecutions for violations. TDA also must “maintain an accurate record of the reports of local sealers [inspectors] of weights and measures.”

Sec. 13.103 subjects water, gas, and electric meters to inspection by TDA at the request of a user. TDA must order the discontinuation of utility use if the meter is incorrect. Sec. 13.103(b) creates an offense if a person fails or refuses to comply with an order.

Counties and cities may appoint sealers and deputy sealers. Two or more counties or a county and one or more cities in that county may use a single set of standards and one sealer. The powers and duties of sealers include testing weights and measures and keeping certain records. The commissioner, the chief deputy of weights and measures, and all sealers have the same powers as peace officers in performing their official duties. Sec. 13.108(c) gives sealers performing their duties the right, without a warrant, to enter any premises or to stop any vendor or vehicle containing commodities for sale or delivery.

TDA must issue instructions and adopt rules governing state, county, and local sealers. Each sealer may inspect and test all weights and measures used in the locality to which the sealer is assigned or in the city or county in which the sealer is appointed. A violation under this chapter is a Class C misdemeanor, punishable by a maximum fine of \$500.

Chapter 15 governs farmers’ market nutrition programs. Sec. 15.004 requires TDA and the Texas Department of Health (TDH) to adopt an interagency agreement concerning a special nutrition program.

Chapter 53 authorizes two or more people to organize a financial pool for agricultural purposes or to raise or market livestock. TDA must issue a certificate of authority to a qualified applicant under the chapter.

Chapter 77 requires commissioners courts to obtain written approval from TDA concerning methods of fire ant eradication.

Chapter 96 requires TDA to prescribe standards for sampling grain and qualifications for grain samplers. It creates a licensing program for grading

grain but does not prohibit a person other than a licensed grain sampler from sampling grain for grading purposes. It is a Class B misdemeanor (punishable by up to 180 days in jail and/or a maximum fine of \$2,000) to misrepresent oneself as a licensed grain sampler.

Chapter 104 governs marketing orders issued by TDA that prescribe rules for distributing, handling, or processing agricultural commodities, including surplus commodities, during a specified period. Producers and handlers of commodities may petition TDA to issue a marketing order. TDA must keep records in association with marketing orders.

Chapter 145 authorizes TDA to grade livestock at the request of an livestock owner. TDA may employ inspectors for this purpose and may collect fees in amounts necessary to cover the costs of providing the service.

Chapter 252 allows the TDA commissioner to guarantee to eligible lenders that the state will pay a percentage of the sum due in the event of default on a family farm and ranch. Secs. 252.012 to 252.029 establish a loan program for family farmers and ranchers. Sec. 252.081 creates a farm and ranch loan security fund, which the commissioner may use to acquire interest in property purchased under a guaranteed farm and ranch security loan.

**DIGEST:**

CSHB 2008 would repeal the requirements and powers of TDA enumerated above and would abolish the farm and ranch loan security fund. It would preserve the requirement that TDA issue instructions and adopt rules to govern state sealers but would remove the requirement that TDA do so for county and local sealers.

The bill would preserve sealers' authority to inspect and test all weights and measures used in their assigned localities, but it would remove this authority for sealers "in the city or county in which the sealer is appointed."

The bill would take effect September 1, 2003.

**SUPPORTERS  
SAY:**

CSHB 2008 would clean up the Agriculture Code by repealing obsolete or unused discretionary provisions and certain statutes that duplicate existing law or activities of other government agencies.

For example, Agriculture Code, sec. 15.004 requires TDA and TDH to adopt an interagency agreement for implementing a nutrition program through farmers' markets. The TDA's sunset legislation in 1995 repealed the authority for the program.

Similarly, according to TDA licensing records, no Texas county or city still employs a weights and measures sealer, making portions of that chapter obsolete. Similarly, TDA finds no record of any loan guarantee issued under the family farm and ranch security program.

The U.S. Department of Agriculture (USDA) already performs some functions that certain statutes authorize TDA to perform. For example, USDA establishes standards for and operates a federal grain inspection service, conducts a marketing order process, and grades livestock. Moreover, because TDA never has received a request to establish a marketing order and because TDA must use USDA standards to classify livestock, the statutes simply are not necessary.

TDA does not need to inspect or service utility meters. Utility companies perform this service and are subject to regulation by the various state agencies. Nor does TDA need peace officer authority to inspect and enforce weights and measures, and the department should not have to approve county plans to use county money to eradicate fire ants. In regard to TDA's inspection authority over weights and measures, inspectors normally obtain the consent of landowners to inspect measurement instruments. Otherwise, inspectors can enlist peace officers for assistance.

TDA already must report quarterly to the governor and the Legislative Budget Board on program management, funding, and accountability, so sec. 13.005 duplicates an existing requirement. These examples illustrate the nature of all repeals and amendments the bill would enact.

**OPPONENTS  
SAY:**

State inspectors should have police authority because the display of such authority can prove useful in enforcing standards of weights and measures. These standards are critical to ensuring consumer and producer confidence in agricultural commodities. CSHB 2008 would repeal the peace officer authority of inspectors and would repeal their right to enter premises and stop vendors or vehicles containing commodities for sale. TDA officials have a

good record of properly exercising this authority. The proposed repeals would weaken TDA's authority to ensure accurate measures of commodities.

**NOTES:**

The committee substitute would repeal certain provisions relating to weights and measures that the original bill would have preserved. The substitute also would repeal all of Chapter 104 rather than repealing only Subchapter B.

CSHB 2008 would preserve Chapter 49, governing TDA's agricultural technology program, which the original bill would have repealed.