

SUBJECT: Collecting assessments used to market Texas beef

COMMITTEE: Agriculture and Livestock — favorable, without amendment

VOTE: 4 ayes — Hardcastle, Anderson, B. Brown, Herrero
2 nays — Burnam, Farrar
1 absent — Olivo

WITNESSES: For — Ed Small, Texas and Southwestern Cattle Raisers; Ross Wilson, Texas Cattle Feeders Association
Against — None

BACKGROUND: Agriculture Code, ch. 41 pertains to commodity producers boards. Any nonprofit organization representing the producers of an agricultural product may be certified by the Texas agriculture commissioner to act as the commodity producers board representing the product and to collect an assessment from the producers of the relevant product. These assessments also are called “check-off programs” and were established by acts of Congress for the purpose of increasing demand for the product through promotion, research, and education. Currently, the national beef check-off program, overseen by the Cattlemen’s Beef Promotion and Research Board, assesses \$1 per head on the sale of cattle, of which states retain up to 50 cents.

The Texas Beef Council oversees the program in Texas. Under Texas law, an assessment may be applied by commodity producers boards to fund efforts relating to the marketing, education, research, and promotion of agricultural products. The assessment is collected by deducting the appropriate amount from the purchase price of the commodity. These assessments are not considered state funds.

With regard to assessments, sec. 41.160(e) states that a producer who paid an assessment may file an application to obtain a refund, but a producer may not exempt his or her product sales from assessment by filing a signed request for exemption with the processor at the time of each sale.

DIGEST: HB 2049 would allow the agriculture commissioner to propose the manner in which a producer assessment on commodities would be collected. It would repeal current law about filing an application to obtain a refund or to request an exemption from assessment.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2005.

SUPPORTERS SAY: HB 2049 would enable the continuation of a beneficial program that promotes the Texas beef industry. The beef check-off program has funded beef advertising for many years, including such familiar campaigns as “Beef: It’s What’s for Dinner.” These efforts in part are responsible for the significant increase in beef demand over the past 10 to 15 years. All beef producers benefit from the program, even niche producers.

The bill is necessary because the U.S. Supreme Court is expected to rule later this year on a challenge to the advertising portion of the national program, which holds that the mandatory assessment on all producers for this purpose violates the First Amendment. In the event of an adverse ruling, HB 2049 would authorize the Texas Department of Agriculture to establish a state program that met constitutional standards.

The bill would not make it more difficult for a producer to obtain a rebate from the state program and in fact would remove language that may have restricted rebates. The bill also would authorize the commissioner to allow producers to request exemptions from state assessments. HB 2049 would create enough latitude in the statute to ensure that the Texas beef check-off program would be considered voluntary by any standard.

OPPONENTS SAY: Many ranchers object to the beef check-off program because, in effect, it requires producers to support speech, via a marketing campaign, with which some disagree. Even though the state program allows a producer to obtain a rebate, it still forces the producer to lend money to an industry advertising campaign, a loan that is not repaid unless the producer jumps through administrative hoops. Some object on First Amendment grounds while others simply feel that the marketing campaign does not return equal value on the money assessed. In addition, some niche producers, such as organic ranchers, are loathe to contribute to an advertising campaign that promotes the interests of the corporate beef industry.

HB 2049 likely would do little to address the objectionable aspects of this program unless forced by a Supreme Court decision. Even then, the extent to which dissenting ranchers might receive relief would be up to the commissioner's discretion. Although HB 2049 might move the state beef check-off program in the direction of being voluntary, it probably would not go far enough in addressing its many shortcomings.

NOTES:

The companion bill, SB 1708 by Staples, passed the Senate on the Local and Uncontested Calendar on April 21 and was reported favorably, without amendment, by the House Agriculture and Livestock Committee on May 4, making it eligible to be considered in lieu of HB 2049.