

SUBJECT: Continuing TDA, increasing enforcement authority, restructuring TAFAs

COMMITTEE: Agriculture and Livestock — committee substitute recommended

VOTE: 9 ayes — Gonzalez Toureilles, Anderson, B, Brown, Crabb, Hardcastle, Heflin, Kleinschmidt, Rios Ybarra, Swinford

0 nays

SENATE VOTE: On final passage, April 16 — 31-0

WITNESSES: For — (*Registered, but did not testify*, James Grimm, Texas Poultry Federation; Josh Winegarner, Texas Cattle Feeders Association)

Against — None

On — Todd Staples, Texas Department of Agriculture; (*Registered, but did not testify*: Karen Latta, Sunset Advisory Commission)

BACKGROUND: The Texas Department of Agriculture (TDA), established by the Legislature in 1907, operates regulatory programs including programs related to agricultural pesticides, aquaculture, cooperative marketing associations, egg quality, grain warehouses, handling and marketing of perishable commodities, organic certification, plant quality, structural pest control, seed certification, and weights and measures. The agency also receives input from a number of advisory boards including the State Seed and Plant Board, the Produce Recovery Fund Board, the Wine Marketing Advisory Committee, and the Wine Industry Development Advisory Board. TDA also administers the Texas Public School Nutrition Policy and promotes rural economic development.

TDA is headed by a single commissioner, who is elected in a statewide election every four years. The agency employs approximately 650 staff and its fiscal 2008-2009 budget was \$777.5 million.

The Texas Agricultural Finance Authority (TAFAs) was created in 1987 to provide financial assistance, such as loan guarantees or below-market loan interest rates, to borrowers in the agriculture industry for the expansion,

development, and diversification of production, processing, marketing, and export of Texas agricultural products. According to the Sunset Advisory Commission, most TAFE programs have been under a moratorium since November 2002 due to a high volume of defaulted loans.

The Prescribed Burning Board regulates prescribed vegetation burners. The Texas-Israel Exchange Fund coordinates a cooperative agricultural research program with Israel.

TDA and the Prescribed Burning Board, are subject to Sunset review and will be abolished on September 1, 2009, if not continued by the 81st Legislature.

DIGEST:

CSSB 1016 would continue TDA until September 1, 2021, increase its enforcement authority, and make a number of programmatic changes. The bill would widen eligibility requirements for a number of TAFE programs and impose stricter regulations on prescribed burn managers. The bill also would give the commissioner broader authority to appoint advisory board members and alter the structure of the joint research program between Texas and Israel.

Enforcement. The bill would increase TDA administrative penalties for rule violations for a number of TDA programs. New penalties would not exceed \$5,000. The bill would authorize the commissioner to issue a cease-and-desist order to anyone in violation of TDA licensing requirements. TDA would prioritize inspections based on violation history and other risk-based factors.

The bill would require TDA to make information about its complaint process available to applicants, license holders, and the public. TDA would be required to notify a license holder when a complaint had been filed against the holder. Respondents would be given the option to resolve contested cases and proceedings in an informal manner. TDA would be allowed to request a criminal background report on any licensee, applicant, employee, or board or committee member. The bill would require TDA to review and update exam questions on licensing exams.

Texas Agricultural Finance Authority. The bill would give the Texas Public Finance Authority the exclusive authority to act on behalf of TAFE in issuing debt. TAFE and the Texas Public Finance Authority would be

required to evaluate the creditworthiness of loan applicants and the financial feasibility of projects. TAFE no longer would give preference to value-added agricultural projects. The bill would give the commissioner, rather than the governor, the authority to appoint the TAFE board of directors. The bill also would increase size of the board to include two representatives of young farmers.

Interest rate reduction program. The Linked Deposit Program would be renamed the Interest Rate Reduction Program. Applicants still would apply to borrow money from lending institutions at lower-than-customary interest rates to finance projects that fostered agricultural businesses in Texas. However, program rules no longer would set different loan amounts for different types of projects, nor would rules give preference to certain types of projects over others. The maximum loan amount for any single project would be \$500,000, and the program could not lend more than \$30 million at any given time.

Agricultural Loan Guarantee Program. TDA would charge an administrative fee of not more than one percent of the loan amount for Agricultural Loan Guarantee Program loans. The board would establish tiered loan limits, and total program loans would not exceed three-fourths of the balance in the Texas Agricultural Fund. The board would set up a certified lender program. Interest rate reductions could not exceed three percent or \$10,000 in savings for each borrower per year.

Young Farmer Grant Program. CSSB 1016 would create the Young Farmer Grant Program to give grants to promote agricultural businesses among people under age 46. TAFE's board of directors would operate the program and determine selection criteria. Grant recipients would be required to provide matching funds equal to or greater than the amount of a grant received. Program grant amounts would range from \$5,000 to \$20,000. TAFE would accept applications twice per year. The program would be funded through the Texas Agricultural Fund.

Young Farmer Interest Rate Reduction Program. CSSB 1016 also would create the Young Farmer Interest Rate Reduction Program to promote agricultural businesses among people under age 46. TDA would partner with lending institutions in a linked deposit program that gave loans to young farmers at reduced interest rates. Individual loans could not exceed \$500,000. The TAFE board would adopt rules to determine

program priorities. The program would be funded through the Texas Agricultural Fund.

Prescribed Burning Board. The bill would continue the Prescribed Burning Board and make it subject to future sunset review concurrently with TDA. All professional burn managers would have to be certified and insured. The bill would change the number of years burn manager certifications were valid from five to two. The bill would allow a certified and insured prescribed burn manager to conduct a burn in a county declared to be in a state of emergency, unless the declaration prohibited burns.

The bill would require TDA to set up a comprehensive complaint process and penalties for prescribed burn manager violations. Complaints would be filed in accordance with TDA's general complaint guidelines. Penalties would be based on the severity of the violation. TDA also would be able to request court injunctions and to suspend certifications of prescribed burn violators.

Texas-Israel Exchange Research Program. The bill would abolish the Texas-Israel Exchange Fund Board and the Texas-Israel Exchange Fund, but would create the Texas-Israel Exchange Advisory Committee and the Texas-Israel Exchange Research Program, with similar duties.

Nutritional Outreach Program CSSB 1016 would direct TDA to develop a nutrition outreach program to promote better health and nutrition programs to prevent obesity among children in Texas. The bill would allow TDA to accept outside money for this program.

Wine Industry Development and Marketing Advisory Committee. CSSB 1016 would expand the focus of the Wine Industry Development Advisory Committee to include marketing. The Wine Industry Development and Marketing Advisory Committee would advise the commissioner on the implementation and establishment of the Texas Wine Marketing Assistance Program. The commissioner would appoint committee members, including representatives of grape growers, wineries, wholesalers, package stores, retailers, researchers, consumers, TDA, and the Texas Alcoholic Beverage Commission. Members would be unpaid and serve renewable two-year terms.

Produce Recovery Fund. The bill would extend the amount of time a producer had to initiate a claim against the Produce Recovery Fund from one year to two years following the date payment was due. The bill would allow a producer to receive full value of a claim, up to \$50,000. Claims against unlicensed individuals would be paid up to 80 percent. Unlicensed packers would be required to reimburse the fund at an amount one-and-a-half times the amount of a claim against them.

Weights and measures. CSSB 1016 would require businesses, rather than individuals, to be certified under TDA's weights and measures program. The bill also would eliminate the distinction between state and county weighers. Public weighers no longer could be elected.

Structural pest control. The bill would allow TDA to perform random and unannounced inspections of pesticide and herbicide applicators. The bill would increase the administrative penalty for violations of the Structural Pest Control Act from \$4,000 to \$5,000 per day for each violation.

Beef check off. The Texas Beef Council would consist of one representative of the Livestock Marketing Association of Texas rather than two. The bill would impose six-year term limits on members of the council. The commissioner would approve assessment amounts before collection.

Removal of certain requirements. Cooperative marketing associations no longer would be required to file their articles of incorporation with TDA or pay the associated fee. Cash dealers of perishable commodities no longer would be required to obtain TDA licenses. The bill would remove the requirement for TDA to establish piece rates for agricultural commodities. Roses no longer would have to be labeled with the number of the certificate of authority of the seller. The bill would prohibit the use of illegal citrus budwood for commercial purposes.

Appointments. The bill would require the commissioner and the presidents of Texas A&M and Texas Tech Universities to appoint the members of the State Seed and Plant Board. The bill would require the commissioner to appoint members of the Produce Recovery Fund Board.

The bill also would add standard Sunset provisions governing conflict of interest policies, rulemaking, alternative dispute resolution, technology, and acceptance of gifts.

The bill would take effect September 1, 2009.

**SUPPORTERS
SAY:**

CSSB 1016 would continue the Texas Department of Agriculture and enhance its vital regulatory and economic development functions.

Enforcement. CSSB 1016 would discourage violators by increasing administrative penalties for a number of violations. The current fine for tampering with fuel quality would increase from \$500 to \$5,000, discouraging the practice. The bill would increase the fine for violators of pesticide application rules from \$4,000 to \$5,000 per violation. The other administrative fine increases in the bill would reflect more suitably the severity of the violations.

Texas Agricultural Finance Authority. CSSB 1016 would restructure the TAFE to allow for wider participation in its programs and higher rates of loan repayment. The bill would direct TAFE to consider creditworthiness of borrowers during the application process, which would prevent TAFE from experiencing the high default rates characteristic of the past. Also, the bill would increase participation in the two programs directed at young farmers by raising the maximum age of eligibility from 39 to 45. Eligibility requirements for the general Interest Rate Reduction program also would be relaxed.

Prescribed Burn Managers. The bill would provide stronger oversight of the prescribed burning industry. Prescribed burning is necessary for controlling vegetative fuels that can contribute to wildfires, managing land, and restoring ecosystems. Prescribed burn managers need to be knowledgeable about fire weather, fuel moisture, topography, fire effects, burn plans, and post-burn management. Requiring burn managers to be certified and insured would help prevent negligent managers from performing prescribed burns. Increasing TDA's enforcement powers over prescribed burn managers would increase safety in the practice of prescribed burning.

Nutritional Outreach Program. CSSB 1016 would help prevent children from developing diseases that once were limited to older populations. Data compiled from participants in the Texas Woman, Infants and Children

(WIC) Supplemental Nutritional Program indicate that since 2007, more than 20 percent of the children in the program between two and five years old were overweight or obese. Additionally, one in three Texas school aged children is overweight or obese. The nutritional outreach program created by the bill would help find ways to address the epidemic of obesity among Texas children.

OPPONENTS
SAY:

Enforcement. The administrative penalties in the bill would interfere with the flow of business. In the instance of fuel quality regulation, the bill would increase the penalty for violators tenfold from \$500 to \$5,000. Such dramatic fine increases could harm small businesses who might not be able to afford to pay such high fines.

Prescribed burn managers. The regulations placed on the prescribed burning industry would be too severe and would negatively impact the industry. It is very difficult for prescribed burn managers to obtain affordable versions of the specialized policies required for prescribed burns. Requiring all burn managers to carry insurance would undoubtedly decrease the number of professional burns conducted. Furthermore, TDA does not have the resources necessary to certify all professional burn managers.

OTHER
OPPONENTS
SAY:

The bill should have adopted the Sunset Commission recommendation to develop rules to administer and enforce the Texas Public School Nutrition Policy (TPSNP). The TPSNP prevents public schools in Texas from selling foods that have minimal nutritional value and restricts access to vending machines, protecting children from poor dietary choices. Codifying the TPSNP in statute would increase TDA's ability to administer the policy and would provide continuity in enforcement of the policy between commissioners.

NOTES:

The fiscal note suggests the bill would have a \$146,990 cost to the General Revenue fund and a \$294,976 cost to the Texas Agricultural Fund in fiscal 2010-2011.

The House committee substitute differs from the Senate-passed version in that it would:

- direct TDA to establish a nutrition outreach program;
- allow TDA to conduct criminal background checks;

- prohibit use of illegal citrus budwood for commercial purposes;
- change the composition of the Texas Beef Council; and
- not include the Texas Rural Investment Fund.