

BILL ANALYSIS

H.B. 1949
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Agriculture & Livestock
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The Texas Department of Agriculture currently does not have the authority to enter premises to inspect plants over the objections of the owner. In situations where the department has reason to believe a plant pest or disease is present in an area, access to physical areas and plants is crucial in the fight to control the pest, disease, or the spread thereof. When the potential damage from a plant pest or disease is particularly high, the ability to inspect plants on premises on a timely basis is of utmost importance to assist the agricultural industry and to minimize the potential harm to the state's economy.

H.B. 1949 grants the department the authority to obtain a warrant from a magistrate to gain access to premises for the purposes of conducting inspections of items likely to contain plant pests or plant diseases, to conduct testing of plants, to trap insects, and to treat plant diseases and pests.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 1949 amends the Agriculture Code to authorize the Texas Department of Agriculture, in addition to its existing authority to inspect vehicles for insect pests or plant diseases, to seek an agriculture warrant with respect to a plant pest or plant disease, as identified in the application for a warrant, to conduct an inspection of physical areas, containers, buildings, or items that are reasonably likely to contain a plant pest, a plant disease, or an infected or potentially infected plant; set a trap for certain plant pests; examine records pertaining to the detection, treatment, purchase, or sale of plants; or test, treat, identify, quarantine, take samples of, seize, or destroy infected or potentially infected plants.

H.B. 1949 provides that an agriculture warrant may be issued only by a magistrate authorized to issue a search warrant, only after the department has exercised reasonable efforts to obtain consent to conduct a search, and on application by the department accompanied by a supporting affidavit that establishes probable cause for the issuance of the warrant. The bill requires the warrant to describe the street address and municipality or the parcel number and county of each place or premises subject to the warrant, and each type of plant pest or disease that is the subject of the warrant.

H.B. 1949 establishes that, in determining the existence of probable cause for the issuance of an agriculture warrant, it shall be sufficient to show only that the place or premises described in the application are located in an area subject to a quarantine established by the department with respect to the plant pest or disease that is the subject of the warrant, or that there is a reasonable probability the place or premises contain a plant pest or disease or are located in an area that is reasonably suspected of being infected with a plant pest or disease because of its proximity to a

known infestation.

H.B. 1949 establishes that a single application and affidavit is sufficient for the issuance of multiple agriculture warrants if the application for the warrant describes the location of each place or premises subject to the warrant and all those places or premises are located in the same county.

H.B. 1949 entitles the department to an ex parte hearing on an application for an agriculture warrant. The bill authorizes a department employee to serve and execute the warrant and to undertake any action authorized by the warrant. The bill requires a sheriff or constable, on request by the department, to accompany and assist the department employee in serving or executing the warrant.

H.B. 1949 requires a copy of the warrant, at the time the warrant is executed, to be delivered to a person 18 years of age or older who is occupying or living in the place or premises subject to the warrant or to be attached to the place or premises in a conspicuous location.

H.B. 1949 establishes that an agriculture warrant is valid until the 61st day after the date the warrant is issued and that it authorizes multiple executions of the warrant before the date the warrant expires. The bill provides that a warrant may be renewed or extended by the magistrate who issued the original warrant if the magistrate determines there is probable cause for the warrant to be reissued or extended. The bill requires the agriculture warrant to be returned to the issuing magistrate before the warrant expires.

H.B. 1949 prohibits an agriculture warrant from being executed between 7 p.m. and 7 a.m. of the following day, or on a state holiday. The bill prohibits an agriculture warrant from authorizing the entry into or inspection of the interior of any occupied residential dwelling, or being issued in blank.

H.B. 1949 creates a Class B misdemeanor offense for a person who intentionally interferes with the execution of an agriculture warrant.

H.B. 1949 establishes that its provisions do not restrict the authority of the state or a political subdivision to otherwise conduct an inspection with or without a warrant as authorized by other law.

EFFECTIVE DATE

September 1, 2009.