

BILL ANALYSIS

C.S.S.B. 1016
By: Estes
Agriculture & Livestock
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Texas Department of Agriculture (TDA) encompasses all phases of modern agriculture, agricultural businesses, and consumer protection. To fulfill its mission of making Texas the leader in agriculture, TDA: promotes Texas agricultural products; promotes economic development in rural communities; regulates pesticides, measuring devices, and agricultural commodities; controls destructive plant pests and diseases; and administers federal nutrition programs for children and adults.

The Texas Department of Agriculture, Prescribed Burning Board, and Texas-Israel Exchange Fund Board are subject to the Sunset Act and will be abolished on September 1, 2009 unless continued by the Legislature. The bill contains the Sunset Commission's recommendations to continue the Department for the standard 12-year period; continue the Prescribed Burning Board, but remove its separate Sunset date so that it will be reviewed along with the Department in the future; and abolish the Texas-Israel Exchange Fund Board, but allow the Department to seek funding for binational agricultural research as it sees fit. The Sunset Commission also found opportunities to redirect several of TDA's programs to ensure they meet the needs of today's agriculture industry and the state as a whole, as well as to allow the Commissioner of Agriculture to place his stamp on the agency. The bill includes several changes in law to reflect the Sunset Commission's recommendations and other changes made in the Senate and House committees.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the board of directors (board) for the Texas Agricultural Finance Authority in SECTION 1.09, SECTION 1.13, SECTION 1.16, and SECTION 1.17 of this bill.

Rulemaking authority previously granted to the board is modified in SECTION 1.03, SECTION 1.08, and SECTION 1.13 of this bill.

Rulemaking authority is expressly granted to the commissioner of agriculture (commissioner) in SECTION 4.02 of this bill.

Rulemaking authority previously granted to the commissioner is modified in SECTION 4.07 of this bill.

Rulemaking authority is expressly granted to the Texas Department of Agriculture (TDA) in SECTION 2.10, SECTION 5.04, SECTION 5.12, SECTION 6.03, SECTION 6.05, and SECTION 9.02 of this bill.

Rulemaking authority previously granted to TDA is modified in SECTION 5.07, SECTION 6.02, SECTION 7.04, SECTION 9.13, SECTION 9.14, and SECTION 9.18 of this bill.

ANALYSIS

Restructures the Texas Agricultural Finance Authority's programs.

C.S.S.B. 1016 provides that the Commissioner of Agriculture, rather than the Governor, appoints the TAFE Board of Directors, and adds two members representing young farmers to the Board of Directors of TAFE. The bill provides that changes to the TAFE Board member appointments apply only to members appointed on or after September 1, 2009. The bill also provides that new Board members be appointed as soon as practicable after September 1, 2009. The bill removes the statutory requirement that TAFE receive a portion of the State's private activity bond authority and requires TAFE to issue debt through the Texas Public Finance Authority.

C.S.S.B. 1016 creates the Agricultural Loan Guarantee Program on September 1, 2009. The bill allows for tiered loan limits, an interest rate rebate component, fixed interest rates, and a certified lender's

program. C.S.S.B. 1016 dissolves the Young Farmer Loan Guarantee Account and transfers money in that account to the Texas Agricultural Fund Account. The bill allows the TAFE Board to access funds in the Agricultural Fund Account to guarantee loans under this program. The bill specifies that the amount that may be used to guarantee loans may not exceed three-fourths of the amount in the Fund. The bill also adds language specifying that the maximum interest rate reduction may not exceed either three percent or an amount resulting in \$10,000 in interest savings for the borrower for the year. The bill also requires the TAFE Board to charge an administrative fee on guaranteed loans to pay the administrative costs of the program.

C.S.S.B. 1016 eliminates the Young Farmer Guarantee Program on September 1, 2009 and replaces it with two programs exclusively for young farmers at least 18 years of age but younger than 46. The bill establishes the Young Farmer Interest Rate Reduction Program, reflecting procedures of TAFE's existing interest rate reduction program, and allowing targeted farmers to receive reduced interest rates through private lenders. The bill establishes the Young Farmer Grant Program for young farmers to receive grant funding through a competitive process. The bill limits the amount of the grants and requires the grantee to provide matching funds. The bill provides that both programs would be funded through the Texas Agricultural Fund Account.

C.S.S.B. 1016 also renames the Linked Deposit Program as the Interest Rate Reduction Program. The bill removes statutory language establishing specific goals and objectives for the program, including to encourage commercial lending for enhanced production, processing, and marketing of certain agricultural crops and to encourage value-added processing of agricultural products. The bill instead provides for the board, through the program, to foster the creation and expansion of enterprises based on agriculture. The bill also removes language limiting loan amounts to \$250,000, making the maximum loan amount \$500,000.

Continues the Prescribed Burning Board and strengthens TDA's enforcement authority for the prescribed burn program.

C.S.S.B. 1016 continues the Prescribed Burning Board as a semi-independent board, but removes its separate Sunset date and provides its review during the same period as TDA. The bill authorizes the agency to impose the same administrative sanctions, including administrative penalties, on non-compliant prescribed burn managers and unlicensed activities, as TDA has in its general enforcement powers. C.S.S.B. 1016 requires the agency to develop a complaint process for taking corrective action for prescribed burning violations.

C.S.S.B. 1016 requires the agency to renew prescribed burn manager certifications every two years. The bill changes the title of "certified prescribed burn manager" to "certified and insured prescribed burn manager," and allows such a certified prescribed burn manager to conduct a burn in a county in which a state of emergency or state of disaster has been declared by the Governor or President, as long as that Declaration does not expressly prohibit all outdoor burning.

Abolishes the Texas-Israel Exchange Fund.

C.S.S.B. 1016 abolishes the Texas-Israel Exchange Fund and Board, and gives the Texas Department of Agriculture the discretion to seek funding for cooperative agricultural research as a program within the Department, as the agency sees fit. The bill also allows TDA to establish an advisory committee to provide guidance and direction on activities conducted and money appropriated for cooperative agricultural research.

Removes the Governor's responsibility for appointing the members of certain agriculture-related boards.

C.S.S.B. 1016 provides that, instead of the Governor, the Commissioner of Agriculture appoints representatives of seed or plant producers, sellers, and farmers, and the presidents of Texas A&M University and Texas Tech University appoint representatives of their respective universities, as members of the State Seed and Plant Board. The bill also requires the Commissioner of Agriculture, rather than the Governor, to appoint the members of the Produce Recovery Fund Board.

Combines the two wine advisory committees into one.

C.S.S.B. 1016 merges TDA's separate advisory committees for wine industry development and wine marketing assistance into a single Wine Industry Development and Marketing Advisory Committee. The bill provides that the Commissioner of Agriculture appoint a diverse cross-section of the wine industry and may appoint a person who previously served on either of the two wine committees.

Eliminates regulation of certain activities and conforms the regulation of others to reflect current industry practices.

C.S.S.B. 1016 eliminates the certification of rose graders, the requirement for TDA to establish piece rates for agricultural commodities, and the requirement that cooperative marketing associations register or file articles of incorporation with TDA. The bill also exempts cash dealers from the requirement to

register with TDA in the handling and marketing of perishable commodities program. The bill changes the regulatory structure of the public weigher program such that businesses, rather than persons who are elected or appointed, would be registered. The bill removes separate references to state, county, appointed, and deputy public weighers, and removes the process for electing a county public weigher. C.S.S.B. 1016 raises the limit for claims under the Produce Recovery Fund from \$35,000 to \$50,000 and removes other statutory claim limitations.

Regulates unlicensed produce dealers.

C.S.S.B. allows a person who purchases perishable commodities without a license to obtain a license within 30 days of their first purchase. The bill applies the same regulatory requirements of licensed perishable commodities dealers to unlicensed dealers. The bill allows producers of perishable commodities to file claims with the Produce Recovery Fund to recover money lost to an unlicensed dealer. The bill provides that producers who file claims against unlicensed dealers may only receive 80 percent of the amount of their claim from the Produce Recovery Fund. The bill also requires unlicensed dealers who have had a claim filed against them to repay the Produce Recovery Fund one and a half times the amount of the claim.

Conforms key elements of TDA's licensing and enforcement functions to commonly applied licensing practices.

C.S.S.B. 1016 requires TDA to adopt clear procedures governing all parts of the testing process, including test admission and administration, and requires TDA to post its policies on testing procedures on its website. The bill also requires TDA to evaluate the effectiveness of test questions in assessing knowledge. C.S.S.B. 1016 authorizes TDA to charge fees for duplicate licenses, and requires TDA to adopt a system under which licenses expire on various dates during the year. The bill allows TDA to increase or decrease the term of an initial or renewal license to coordinate the expiration dates of multiple licenses held by one person or group of licensees.

C.S.S.B. 1016 requires TDA to clearly outline its enforcement process and make information about the process accessible to licensees, including information about actual complaints against licensees. The bill also requires TDA to develop a method for analyzing trends in complaints and violations. The bill authorizes TDA to enter and inspect the premises of a pesticide licensee without notice during regular business hours. The bill allows TDA to establish a risk-based approach for conducting additional inspections based on specified criteria and to waive any inspection requirement under law if an emergency arises or to accommodate complaint investigations or risk-based inspections. C.S.S.B. 1016 requires TDA to offer respondents the opportunity to settle contested cases through informal settlement. The bill increases TDA's administrative penalty authority to \$5,000, and allows TDA to consider each day a violation continues or occurs to be a separate violation for the purposes of penalty assessment. The bill authorizes TDA to issue cease-and-desist orders to stop illegal unlicensed activity.

Conforms the Structural Pest Control Act with the Agriculture Code.

C.S.S.B. 1016 conforms the Structural Pest Control Act with TDA's general authority under the Agriculture Code to better integrate the program into the Department's regulatory structure. The bill deletes language and repeals certain licensing and enforcement provisions of the Structural Pest Control Act and applies similar provisions in the Agriculture Code related to TDA's other licensing and regulatory programs to structural pest control regulations.

C.S.S.B. 1016 eliminates the exemption from the Structural Pest Control Act for those holding a florist or nursery registration certificate from TDA. The bill removes a duplicative and outdated provision of the Structural Pest Control Act and makes other cleanups to reflect recent enactments. The bill allows TDA to enter into reciprocal licensing agreements with other states that have similar structural pest control licensing requirements as Texas. The bill repeals the outdated requirement for TDA to adopt bylaws governing the structural pest control program.

Continues the Texas Department of Agriculture for 12 years.

C.S.S.B. 1016 changes the Department's Sunset review date to 2021 to continue the agency for the standard 12-year period.

Applies standard Sunset across-the-board recommendations.

C.S.S.B. 1016 adds standard Sunset language requiring the TDA to make effective use of technology in its delivery of services and provision of information to the public and to develop a policy that encourages the use of negotiated rulemaking and alternative dispute resolution. The bill also updates standard Sunset language regarding prohibiting a person from serving as a high-level agency employee if the person, or their spouse, is an officer, employee, or paid consultant of a regulated industry.

Updates the Agriculture Code to reflect current agency practices and conform regulatory programs administered by TDA.

C.S.S.B. 1016 allows TDA to solicit and accept gifts, grants, and donations from any person to be expended or distributed for any public purpose related to the agency's duties. The bill removes specific requirements for the expiration and reestablishment of emergency quarantines and instead requires TDA to follow the emergency rulemaking procedures in the Government Code, Chapter 2001 when establishing an emergency quarantine. The bill allows TDA to establish a Mexican Fruit Fly quarantine without a proclamation from the Governor. The bill removes requirements for TDA to hold five regional hearings and publish notice in three major newspapers before adopting any proposed pesticide rule. The bill repeals outdated language regarding the use of the term "Texas Agricultural Product".

Other provisions.

C.S.S.B. 1016 makes the commercial use of citrus budwood that is not certified or does not come from a designated foundation grove a criminal offense and subject to administrative penalties.

C.S.S.B. 1016 qualifies the Texas Beef Council to collect the proceeds of and administer in Texas the federal beef check off program. The bill reduces the number of members on the Council by removing one of the members representing the Livestock Marketing Association of Texas and provides for the Council to nominate members to the Commissioner for appointment. The bill also imposes limitations on the terms of Council members. The bill makes other changes to facilitate the assessment and collection of funding for the check off program, subject to referendum and approval by the Commissioner. The bill directs how the assessment is to be applied and includes the administrative costs of conducting the assessment referendum. The bill also allows the Commissioner, on the Council's recommendation, to exempt producers from the assessment if they are exempt under federal law.

C.S.S.B. 1016 allows TDA to develop an outreach program to promote better health and nutrition programs and prevent obesity among children. The bill allows TDA to solicit gifts, grants, and donations from any public or private source for this program and to adopt rules as necessary.

C.S.S.B. 1016 allows TDA to obtain criminal history record information from DPS and FBI on person including licensees, employees, and board or committee members. The bill prohibits TDA from disclosing criminal history information to any person other than as required under a court order.

C.S.S.B. 1016 specifies that a livestock brand recorded by a federally authorized inspection association does not serve as a record under state law and that such an association has no duty to verify ownership of livestock.

Technical Changes

C.S.S.B. 1016 updates statute to define terms and reflect changes in state agency names, as deemed necessary by the Texas Legislative Council.

The bill repeals the following statutory provisions:

- Texas Agriculture Code, ' 44.001(3)
- Texas Agriculture Code, ' 58.0173(c)
- Texas Agriculture Code, ' 58.0211(b)
- Texas Agriculture Code, ' 58.057(a), (c), and (e)
- Texas Government Code, ' 1372.0235
- Texas Agriculture Code, ' 45.003
- Texas Agriculture Code, ' 45.004
- Texas Agriculture Code, ' 45.006
- Texas Agriculture Code, ' 45.007(a) and (c)
- Texas Agriculture Code, ' 45.008
- Texas Agriculture Code, ' 62.0023(c)
- Texas Agriculture Code, ' 103.003(b)
- Texas Agriculture Code, ' 103.017(c)
- Texas Alcoholic Beverage Code, ' 110.003
- Texas Agriculture Code, ' 13.252
- Texas Agriculture Code, ' 13.253
- Texas Agriculture Code, ' 13.2535
- Texas Agriculture Code, ' 13.254
- Texas Agriculture Code, ' 52.035(b)
- Texas Agriculture Code, ' 52.152
- Texas Agriculture Code, ' 101.006(b)
- Texas Agriculture Code, ' 103.008(c)
- Texas Agriculture Code, ' 121.004
- Texas Labor Code, ' 62.002(1)
- Texas Labor Code, Chapter 62, Subchapter C

- Texas Occupations Code, ' 1951.202
- Texas Occupations Code, ' 1951.310
- Texas Occupations Code, ' 1951.311
- Texas Occupations Code, ' 1951.501(c) and (d)
- Texas Occupations Code, Chapter 1951, Subchapter L
- Texas Occupations Code, ' 1951.604
- Texas Occupations Code, ' 1951.605
- Texas Agriculture Code, ' 12.017
- Texas Agriculture Code, ' 72.003
- Texas Agriculture Code, ' 72.011(c)
- Texas Agriculture Code, ' 76.005

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute modifies language in the original bill to specify that the amount that may be used to guarantee loans in the Agricultural Loan Guarantee Program may not exceed three-fourths of the amount in the Texas Agricultural Fund, rather than the lesser of three-fourths or \$12 million. The substitute specifies that private pesticide applicator licenses are valid for five years, rather than expiring on the fifth anniversary of the date they were issued or renewed as in current statute. The substitute modifies language in the original bill prohibiting the use of illegal citrus budwood for commercial purposes to clarify the intent of the provision. The substitute modifies language in the original bill regarding the structure of the Texas Beef Council to formalize the role of nominating organizations in choosing members of the Council. The substitute adds language allowing a member of the Beef Council who is elected to serve as an officer to serve as chair or past chair beyond a typical member's term limit.

The substitute removes language from the original bill establishing the Rural Investment Fund. The substitute adds language not in the original bill allowing TDA to develop an outreach program to promote better health and nutrition programs and to solicit gifts and grants for this program. The substitute adds language not in the original bill allowing TDA to obtain criminal history record information from DPS and FBI on licensees, employees, and board or committee members. The substitute adds language not in the original bill specifying that a livestock brand recorded by a federally authorized inspection association does not serve as a record under state law and that such an association has no duty to verify ownership of livestock.