

BILL ANALYSIS

Senate Research Center
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H.B. 2166
By: Kacal; Raymond (Flores)
Agriculture
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 2166 amends current law relating to the administration of seed and plant certification in this state by the State Seed and Plant Certification Council and the Texas Crop Improvement Association.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to State Seed and Plant Certification Council is rescinded in SECTION 5 (Section 62.005, Agriculture Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 61.007, Agriculture Code, by adding Subsection (c), as follows:

(c) Prohibits a person from:

- (1) selling or offering for sale in this state seed or plants with labeling or packaging accompanying the seed or plants using the terms "certified seed," "from officially inspected fields," "state crop improvement agency inspected," "approved seed," "approved plants," "approved sods," "approved trees," "inspected fields," "foundation seed," "certified plants," or terms having the same meaning, unless the seed or plants have been certified by a seed certifying agency as Foundation, Registered, or Certified seed or plants;
- (2) representing the person to be a registered plant breeder or approved producer of Foundation, Registered, or Certified seed or plants unless the person has been registered or approved by a seed certifying agency;
- (3) selling or offering for sale in this state Foundation, Registered, or Certified seed or plants that are not in compliance with applicable laws or standards adopted by a seed certifying agency; or
- (4) selling or offering for sale seed or plants represented to be certified in explicit oral or written statements or by misleading oral or written statements if the seed or plants have not been certified or have not been certified as being of the class of which they are represented by a seed certifying agency.

SECTION 2. Amends Section 62.001, Agriculture Code, as follows:

Sec. 62.001. DEFINITIONS. Defines "association," "certified seed," "council," and "plant." Deletes existing text defining "board."

SECTION 3. Amends Section 62.002, Agriculture Code, as follows:

Sec. 62.002. STATE SEED AND PLANT CERTIFICATION COUNCIL. (a) Provides that the State Seed and Plant Certification Council (council), rather than the State Seed and Plant Board (board), is composed of:

(1) one individual, appointed by The Texas A&M University System vice chancellor for agriculture, from the Department of Soil and Crop Sciences, Texas A&M University TAMU, rather than by the president of TAMU, from the Soils and Crop Science Department, Texas Agricultural Experiment Station;

(2) one individual, appointed by the dean of the College of Agricultural Sciences and Natural Resources, Texas Tech University (TTU), from the Department of Plant and Soil Science, rather than by the president of TTU, from the Department of Plant and Soil Sciences, TTU;

(3) one individual, elected by the members of the trade association, approved by the council as a Texas Foundation, Registered, or Certified seed or plant producer who is not employed by a public institution, rather than one individual, appointed by the commissioner of agriculture (commissioner), licensed as a Texas Foundation, Registered, or certified seed or plant producer who is not employed by a public institution;

(4) one individual, elected by the members of the trade association, rather than appointed by the commissioner, who sells Texas Foundation, Registered, or Certified seed or plants;

(5) one individual, elected by the members of the trade association, rather than appointed by the commissioner, actively engaged in farming but not a producer or seller of Texas Foundation, Registered, or Certified seed or plants; and

(6) the head of the association, rather than the head of the seed division of the Texas Department of Agriculture (TDA).

(b) Provides that the members described by Subsections (a)(1), (2), and (6) serve on the council as ex officio members, rather than an individual appointed from a state university or TDA serves on a board as an ex officio member. Provides that members serve without compensation but are entitled to reimbursement by the association, rather than state, for actual expenses incurred in the performance of their duties.

(c) Provides that a member whose employment is terminated with the association or the university, rather than with the agency or department, from which the member was appointed or who ceases to be engaged in the business or professional activity that the member was elected to represent vacates membership on the council.

(d) Requires the council to elect a member of the council as chair to serve in that capacity at the pleasure of council, rather than requiring the commissioner to appoint a member of the board as the chairman, to serve in that capacity at the pleasure of the commissioner. Requires the council annually to elect a vice chair and secretary.

(e) Deletes existing Subsection (e) requiring that appointments to the board to be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

SECTION 4. Amends Sections 62.004(a) and (b), Agriculture Code, as follows:

(a) Authorizes the State Seed and Plant Council, rather than board, to establish, not inconsistent with federal law, the eligibility of various kinds and varieties of seed and plants for genetic purity and identity certification and the procedures for that certification.

(b) Makes conforming changes.

SECTION 5. Amends Section 62.005, Agriculture Code, as follows:

Sec. 62.005. New heading: APPROVAL OF PRODUCERS OF FOUNDATION, REGISTERED, OR CERTIFIED SEED. (a) Authorizes a person who wants to produce a certified class of seed or plant for which the council has established standards of genetic purity and identity to apply to the council for approval as a Foundation, Registered, or

Certified producer of seed or plants, rather than authorizing a person who wants to produce a certified class of seed or plant for which the board has established standards of genetic purity and identity to apply to the board for licensing as a Foundation, Registered, or Certified producer of seed or plants. Requires that, to be approved, rather than licensed, as a producer, a person to satisfy the council, rather than board, that:

(1) makes a nonsubstantive change;

(2) makes a nonsubstantive and a conforming change; and

(3) the person has met any other council, rather than board, requirements as to knowledge of the production or maintenance of seed or plants for the certification generations the person wishes to produce, rather than for which he or she applies to be licensed. Makes a nonsubstantive change.

(b) Authorizes the council to adopt standards, rather than rules governing the production and handling by approved, producers of certified classes of seed and plants, rather than by licensed producers of certified classes of seed and plants, to ensure the maintenance of genetic purity and identity.

(c) Provides that approval, rather than a license, to produce Foundation, Registered, or Certified seed or plants is not transferable and is permanent unless revoked by the council as a result of a violation of applicable law or standards governing the production and handling of seed or plants, rather than is not transferable and is permanent unless revoked as provided in this chapter (Seed and Plant Certification Seed). Provides that a person approved as a producer of Foundation, Registered, or Certified seed or plants is eligible to produce certified seed or plants, as applicable, of the class the person is approved to produce or of any lower class of certified seed or plants, as determined by the council, rather than as provided in the license of the class for which he or she is licensed or of any lower class of certified seed or plants, as determined by the board.

(d) Requires an application for approval, rather than licensing, as a Foundation, Registered, or Certified producer of seed or plants to be accompanied by a fee, as determined by the council, rather than as provided by TDA rule.

SECTION 6. Amends Section 62.006, Agriculture Code, as follows:

Sec. 62.006. REGISTRATION OF PLANT BREEDERS. (a) Authorizes a person engaging in the development, maintenance, or production of seed or plants for which standards of genetic purity and identity have been established by the council, rather than the board, to apply to the council for registration as a plant breeder. Makes conforming changes.

(b) Provides that a certificate of registration is not transferable and is permanent unless revoked by the council as a result of a violation of applicable law or standards governing the production and handling of seed or plants, rather than is not transferable and is permanent unless revoked as provided in this chapter.

SECTION 7. Amends Section 62.008, Agriculture Code, as follows:

Sec. 62.008. CERTIFICATION OF SEED AND PLANTS. (a) Provides that the Texas Crop Improvement Association is the seed certifying agency authorized to officially certify seed and plants in this state. Requires the association to comply with standards and procedures established by the council in accordance with the Federal Seed Act (7 U.S.C. Section 1551 et seq.) to assure the genetic purity and identity of the seed and plants certified. Deletes existing text providing that the Texas Department of Agriculture (TDA) is the certifying agency in Texas for the certification of seed and plants.

(a-1) Requires the association to perform seed and plant certification work on a financially self-supporting basis.

(a-2) Requires the association, rather than TDA, to employ a sufficient number of inspectors to carry out the inspection provisions of this chapter. Requires the inspectors to meet qualifications set by the council, rather than by the board.

(b) Provides that a person who is approved by the council, rather than licensed, as a Foundation, Registered, or Certified seed or plant producer or who is registered as a plant breeder is eligible to have seed or plants of an eligible class and variety certified by the association, rather than (TDA). Makes conforming changes.

(c)-(d) Makes conforming changes.

SECTION 8. Amends Section 62.009, Agriculture Code, as follows:

Sec. 62.009. SEED AND PLANTS FROM OUTSIDE THE STATE. (a) Authorizes the council to adopt requirements, rather than rules adopted by TDA, including testing and standards, which must be met before seed or plants represented to be of certified class may be shipped into the state for distribution in the state. Requires the requirements, rather than rules, to be designed to ensure buyers in the state of having available certified seed and plants of known origin, genetic purity, and identify and is required to correspond to appropriate standards used in certifying seed and plants produced in Texas.

(b) Authorizes the council, rather than TDA, to require inspections by the association of seed and plants represented to be of a certified class and shipped into the state for distribution in the state. Makes conforming changes.

(C) Makes conforming changes.

(e) Provides that seed or plants shipped into the state for distribution in the state which are represented to be of a certified class and which are found by the association, rather than TDA, after investigation to violate the requirements of this section are restricted from distribution. Deletes existing text authorizing TDA to order the seed or plants in violation confiscated and retained under general supervision of TDA. Deletes existing text authorizing an owner or consignee of restricted or confiscated seed or plants to appeal the order by filing an appeal within 10 days of the order. Deletes existing text providing that appeal is in the county court of the county where the seed or plants are restricted or were confiscated and that the appeal in county court is de novo. Deletes existing text authorizing TDA, if no appeal is filed as provided in this section or if after an appeal in county court, TDA's action is not reversed, to destroy the confiscated seed or plants.

(f) Authorizes the council to recognize a certification issued by a seed certifying agency in:

(1) another state or territory of the United States; or

(2) a country, province, or territory not under the jurisdiction of the United States government.

SECTION 9. Amends Chapter 62, Agriculture Code, by adding Section 62.0095, as follows:

Sec. 62.0095. COOPERATION WITH GOVERNMENTAL ENTITIES. Authorizes the council or association to request TDA or the United States Department of Agriculture to investigate or aid in the investigation of any violation of this chapter (Seed And Plant Certification).

SECTION 10. Amends Sections 64.005(a) and (b), Agriculture Code as follows:

(a) Provides that the council, rather than the board, as constituted under Section 62.002 (State Seed and Plant Board), rather than Section 62.002 of this code, is the board of arbitration for complaints filed under this chapter (Arbitration of Seed Performance Disputes).

(b) Requires the council, rather than board, as a board of arbitration to conduct arbitration as provided by this chapter. Authorizes the arbitration board to be called into session by the Texas Crop Improvement Association or the chair of the council to consider matters referred to the arbitration board by the association or the chair, rather than authorizing the arbitration board to be called into session by the commissioner or the chairman of the board by the commissioner or the chairman.

SECTION 11. Amends Section 64.006(f), Agriculture Code, as follows:

(f) Authorizes the arbitration board or any of its members to, in the course of its investigation:

(1) makes no changes to this subdivision;

(2) grow to production a representative sample of the seed through the facilities of the Texas Crop Improvement Association, rather than the commissioner, or a designated university under the association's supervision, rather than the commissioner's supervision; or

(3) hold informal hearings at the time and place the chair, rather than chairman of the council, rather than the chairman of the board, directs, with reasonable notice to all parties.

SECTION 12. Repealer: Section 62.0021 (Meetings by Telephone Conference Call), Agriculture Code.

Repealer: Section 62.0022 (Board Conflict of Interest), Agriculture Code.

Repealer: Section 62.0023 (Removal of Board Member), Agriculture Code.

Repealer: Section 62.0024 (Standards of Conduct), Agriculture Code.

Repealer: Section 62.0025 (Board Meetings; Administrative Procedure), Agriculture Code.

Repealer: Section 62.0026 (Separation of Responsibilities), Agriculture Code.

Repealer: Section 62.0027 (Board Member Training), Agriculture Code.

Repealer: Section 62.004(c) (relating to the requirement that the board report to TDA the kinds and varieties of seed and plants eligible for certification and the standards adopted for certification eligibility), Agriculture Code.

Repealer: Section 62.0065 (Notice and Analysis of Examination Results), Agriculture Code.

Repealer: Section 62.010 (Revocation, Modification, or Suspension of Registration or License), Agriculture Code.

Repealer: Section 62.011 (Penalties), Agriculture Code.

Repealer: Section 64.005(c) (relating to the requirement that the State Seed and Plant Board be given authority to hire an outside arbitrator who is not an employee of TDA or a member of the arbitration board), Agriculture Code.

SECTION 13. Provides that on the effective date of this Act:

(1) the State Seed and Plant Board is abolished;

(2) the State Seed and Plant Certification Council and the Texas Crop Improvement Association are required to assume the powers and duties assigned by Chapters 62 and 64, Agriculture Code, as amended by this Act; and

SECTION 14. Provides that except for the addition by this Act of Section 61.007(c), Agriculture Code, the changes in law made by this Act may not be construed to affect Chapter 61, Agriculture Code.

SECTION 15. Makes application of this Act prospective. Provides that, for purposes of this section, an offense was committed before the effective date of this act if any element of the offense occurred before that date.

SECTION 16. Effective date: January 1, 2020.