

- SUBJECT:** Regulation of pesticides, herbicides; agricultural worker protection
- COMMITTEE:** Environmental Regulation — committee substitute recommended
- VOTE:** 6 ayes — Chisum, Howard, Kuempel, Stiles, Talton, Yost
0 nays
3 absent — Jackson, Dukes, Saunders
- WITNESSES:** For — Ramiro Alvarado, Rio Grande Valley Sugar Growers, Inc.; Joyce Obst, Texas Agri-Women; Ray Prewett, Texas Citrus Mutual; Durwood Tucker, Texas Farm Bureau

Against — William Beardall, Farm Worker Clients of Texas Rural Legal Aid, Inc.; Reggie James, Consumers Union; Ken Kramer, Sierra Club

On — Steve Bearden, Geoff Conner, Larry R. Soward, Texas Department of Agriculture
- BACKGROUND:** The Texas Department of Agriculture (TDA) enforces state pesticide laws and regulations and through an agreement with the federal government. TDA's responsibilities include pesticide registration, regulating their agricultural application, licensing of dealers and some applicators and enforcing state and federal worker protection laws.
- DIGEST:** CSHB 2479 would allow pesticide registration and pesticide dealer licensing to be biennial instead of annual, repeal the Agricultural Hazard Communication Act, move the licensing of health-related pesticide applicators from the Department of Health to the Structural Pest Control Board, change insurance requirements for commercial applicators, change the way pesticides are added to the state-limited-use list, require TDA to cooperate on the development and implementation of a state management plan for pesticides in groundwater; and move provisions governing herbicides into the chapter on pesticide regulations.

Worker protection standards. CSHB 2479 would repeal the Agricultural Hazard Communication Act that establishes guidelines and rules for providing information about certain chemicals to some agricultural workers, some emergency service organizations and TDA.

TDA would be required to adopt worker protection standards for pesticides if the federal worker protection standard is not adopted or under consideration for adoption. TDA could adopt other rules for the protection of the health, safety and welfare of farm workers and pesticide handlers.

Pesticide registration. CSHB 2479 would require pesticide registration every two years instead of annually. TDA would be authorized to adopt a system of staggered renewal dates. The maximum registration fee would be changed from \$100 annually to \$200 for two years, and TDA would be able to prorate the fees on a monthly basis. TDA would be authorized to charge a fee equal to the registration fee, prorated on a monthly basis, for issuing an experimental use permit

The bill would exempt from state registration requirements pesticides that are not for use in Texas and that are only being manufactured, transported, or distributed for use outside of the state and pesticides that are exempt from registration with the EPA.

The bill would eliminate a requirement that before a pesticide can be registered TDA has to find that the composition of the pesticide warrants the proposed claims.

CSHB 2479 would allow TDA to authorize the selling, distribution or use of pesticides subject to stop-use orders if it determines the pesticides do not present a hazard to the public health, safety or welfare. If TDA issued a pesticide stop-use order because a pesticide is not registered the person responsible for registering the pesticide would be responsible for taking necessary actions to remedy the situation, including reimbursing persons subject to the order for the costs of complying with the order.

The Texas Feed and Fertilizer Control Service would be prohibited from registering a fertilizer with a pesticide that must be registered with TDA unless the pesticide was first registered with TDA.

Labeling of pesticides. CSHB 2479 would require pesticides that are registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) requirements to be labeled according to FIFRA and pesticides that are not subject to FIFRA requirements to meet the current labeling requirements;

Licensing of pesticide dealers. Pesticide dealer licenses would expire biennially on the date they were granted, unless TDA adopted a system of staggered renewal dates, instead of annually on December 31. The license fee would be changed from \$100 annually to \$200 for two years, and TDA would be able to prorate the fees on a monthly basis.

Licensing of health-related pest control applicators. CSHB 2479 would move the licensing of health-related pest control applicators from the Texas Department of Health to the Structural Pest Control Board.

Insurance requirements. CSHB 2479 would eliminate the option of commercial applicators to obtain a bond, certificate of deposit or letter of credit instead of liability insurance. Current requirements that liability insurance coverage be at least \$100,000 for property damage and at least \$100,000 for bodily injury would be changed to a requirement that insurance cover for an aggregate of \$200,000 for bodily insurance and property damage

Adding pesticides to the state-limited-use list CSHB 2479 would eliminate the requirement that TDA add a pesticide to the state-limited-use list if directed to by Texas Natural Resource Conservation Commission (TNRCC) and allow TDA to consider adding to the list if directed to by TNRCC.

State management plan for pesticides in groundwater. TDA would be required to cooperate with the Texas Groundwater Protection Committee to develop and implement federally-mandated state management plans for pesticide in groundwater. If states are required to implement a plan, TDA would be authorized to assess an additional pesticide registration fee of up to \$200 to fund the plan

Herbicides regulation. CSHB 2479 would move Agriculture Code provisions concerning the herbicide regulation (Chapter 75) to the chapter on pesticide regulation.

Miscellaneous. The bill would make numerous other changes including:

- make a current requirement that TDA provide sample tests of pesticides on request optional;
- remove a requirement that labels on pesticides distributed in Texas state their use classification;
- require private applicators to keep records on restricted-use and state-limited-use pesticides and establish record-keeping requirements for public applicators;
- allow persons working for licensed application to be knowledgeable about rules and regulations governing the use of pesticides instead of knowledge about the particular pesticide being used;
- eliminate a current exemption from the noncommercial applicator license fees for government employees;
- eliminate the on-site supervision requirement for persons under the supervision of licensed commercial applicators;
- prohibit certified private applicators from supervising the use of restricted-use and state-limited-use pesticides;
- include Agricultural Hazard Communication Act provisions concerning the furnishing of certain information about stored chemicals to fire departments;
- prohibit property owners from using pesticides that are registered *or* classified instead of ones that are registered *and* classified;

- eliminate the requirement that reports claiming damages from pesticides be filed within 31 days following an alleged occurrence or before a crop has reached a certain stage
- require that the TDA's general administrative penalty procedures (Chapter 12) apply to pesticide administrative penalties.

The bill would take immediate effect if approved by two thirds of the membership of each house.

SUPPORTERS
SAY:

CSHB 2479 would consolidate the state's agriculture pesticide laws, streamline regulatory requirements and make pesticide regulation more efficient. TDA sunset legislation would be the wrong place to consider these changes in pesticide regulation. Sunset bills are supposed to look at departmental policies and procedures, not the details of one area of regulation.

Worker protection standards. CSHB 2479 would merge the state's right-to-know laws with the pesticide laws and make the federal Worker Protection Standards apply throughout the state so that workers and producers can easily identify the applicable laws. This would eliminate confusion that arises because only about 10 percent of agriculture producers are covered by the state right-to-know laws and *all* are covered by the federal laws. In fact, federal requirements address some areas that the state laws do not. Some provisions of the state right-to-know law, such as some maintenance of records and notification of emergency personal, are retained in this bill. TDA would be required to adopt standards if the federal standards are not adopted or under consideration.

Pesticide registration. Allowing biennial instead of annual pesticide registration would cut down on unnecessary paperwork. Allowing staggered renewal dates would allow TDA to spread out the work of registering about 11,000 pesticides. About 77 percent of registrations have no change from year to year. Changes made in between renewals would still have to go through TDA. The current revocation and suspension process works well, and TDA would retain all current authority in this area.

TDA pesticide program is designed to regulate pesticides that are *used* in the state so pesticides that are only being manufactured, transported, or distributed for use outside of the state should be exempt from registration requirements.

Allowing TDA to return pesticides to the market if a stop-use order has been issued and then the department determines the pesticide does not present a hazard to the public would allow TDA to get products back on the market if it mistakenly stops their sale. If a product is not subject to registration, it could not be brought in compliance with the law, which is the only way the product could be returned to the market under current law. This authority would in no way allow TDA to authorize the sale of products that are illegal or not in compliance with the law.

Labeling of pesticides. CSHB 2479 would require pesticides that are subject to federal registration to meet those requirements and ensure that those that are not subject to federal registration meet state requirements. This ensures that the federal requirements take precedence but that all pesticides are subject to some labeling requirements.

Licensing of health-related pest control applicators. The Structural Pest Control Board would be a more appropriate agency to license health-related pest control applicators such as those who spray for mosquitos. TDA would retain its current authority over the pesticides that are used.

Insurance requirements. CSHB 2479 would require that all commercial applicators have liability insurance. Eliminating other forms of coverage such as bonds would provide more comprehensive coverage and ensure that all applicators meet the stricter requirements of liability insurance. Allowing applicators to have property damage and personal injury insurance under some circumstances is current language carried over into this bill.

Allowing an aggregate policy of \$200,000 for bodily injury and property damage is consistent with policies required in other industries. This would eliminate current provisions that limit each type of claim to \$100,000 but would keep the total required insurance at \$200,000. This would mean that

a bodily injury claim for \$125,000 could be paid when it would be limited to \$100,000 under current law.

Adding pesticides to the state-limited-use list TDA should have the ultimate authority concerning adding pesticides to the state-limited-use list because it is the lead agency for pesticide regulation, and it is responsible for registering products, monitoring the list and enforcing pesticide laws.

State management plan for pesticides in groundwater. Giving TDA authority to assess a pesticide registration fee for the state management plan for pesticides in groundwater would allow the state to be ready to implement the plan if required to do so by the federal government. Without a plan Texas could lose registration and use of some pesticides. TDA is the lead agency in pesticide regulation, and CSHB 2479 would require TDA to cooperate with Texas Groundwater Protection Committee in developing the plan to ensure departmental input.

OPPONENTS
SAY:

CSHB 2479 would hurt worker protection, eliminate an important role of TNRCC in pesticide regulation and unwisely loosen some requirements for pesticide registration. The changes made in this bill would be more appropriately addressed in the TDA sunset legislation that must be voted on this legislative session. Some of the proposals in this bill were considered and rejected during the sunset process. Enacting both CSHB 2479 and sunset legislation could lead to conflicting legislation and a question over what takes precedence.

Worker protection standards. Repealing the state farm worker right-to-know law would remove several important farm worker protections. The federal worker protection standards do not give farm workers all of the vital protections they have under the state law. For example, state law, but not federal law, requires that some workers be given "crop sheets" with pesticide exposure information and requires that certain records be kept for 30 years. There is no need to repeal the state right-to-know law because it complements federal law but does not conflict with it. While the right-to-know law covers a small percentage of employers, these are large producers who employ a majority of seasonal workers.

Pesticide registration. If pesticide registration is going to be biennial, the permit cancellation process should be changed so that TDA can more easily deal with violations that call for a permit to be revoked. There currently are detailed due process requirements before a permit can be revoked, and sometimes it is easier and quicker to wait and deny a permit when it comes up for renewal than to go through these revocation procedures. Because this option would be eliminated with biennial registration, the revocation procedures should be made easier.

It would be unwise to exempt from state registration pesticides that are only being manufactured, transported, or distributed for use outside of the state. These facilities would still have to be inspected, and the pesticides would still present a hazard.

Allowing TDA to return pesticides to the market if a stop-use order has been issued and then the department determines the pesticide does not present a hazard to the public could possibly allow TDA to allow a product back on the market if it meets that threshold even though it is not in compliance with the law.

Labeling of pesticides. By requiring some pesticides to meet only federal labeling requirements CSHB 2479 would eliminate for these pesticides any state requirements that may be more stringent.

Licensing of health-related pest control applicators. Removal of the licensing of health-related pest control from the Department of Health and giving it to the Structural Pest Control Board would unwisely allow TDA to be the only regulatory authority in this area.

Insurance requirements. CSHB 2479 could create a loophole where applicators who cannot get liability insurance have no alternative and so do not obtain it. The current options of bonds, certificates of deposits and letters of credit should be retained. Allowing an *aggregate* of \$200,000 in insurance instead of specifying a minimum for each bodily injury and property damage could allow some applicators to get all property damage insurance and no bodily injury or vice versa. This could leave persons who suffer injuries or property owners with no way to receive compensation for damages.

Adding pesticides to the state-limited-use list. Allowing TDA to *consider* adding a pesticide to the state-limited-use list if recommended by TNRCC instead of requiring that it be added would be an unwise significant reduction in the role of TNRCC in pesticides in groundwater. TNRCC regulates groundwater quality and should retain authority to have pesticides added to the state-limited-use list.

State management plan for pesticides in groundwater. CSHB 2479 is unclear about who has the lead authority for developing and implementing the state management plan for pesticides in groundwater. TNRCC should clearly be given this authority because it has the experience and expertise in this area.

NOTES:

The committee substitute made numerous changes in the bill including: eliminating authority for TDA to be the lead agency for any federally mandated state management plan for pesticides in groundwater; allowing for an aggregate insurance policy of \$200,000; placing herbicides under a separate chapter; and giving TDA authority to prescribe by rule procedures for investigating claims of adverse effects of pesticides.

The companion bill, SB 1031 by Haywood, is pending in the Senate Natural Resources Committee.