

SUBJECT: Regulating agricultural chemicals

COMMITTEE: Environmental Regulation — committee substitute recommended

VOTE: 5 ayes — Chisum, Jackson, Allen, Howard, Talton

2 nays — Hirschi, Puente

2 absent — Dukes, Kuempel

WITNESSES: For — Jon Fisher, Texas Agricultural Industries Association; Bob Garrett, Pat Kornegay, Gaylon Stamps, and Robert Putz, Texas Agricultural Aviation Association; Elbert Hutchins, Texas Veterinary Medical Association; Gary Joiner, Texas Farm Bureau; Ray Prewett, Texas Citrus Mutual and Texas Vegetable Association;

Against — Walter Hinojosa, Texas AFL-CIO; Reggie James, Consumers Union; Susan Pitman, The Chemical Connection

On — Larry Soward, Texas Department of Agriculture

BACKGROUND : The Texas Department of Agriculture (TDA) enforces state pesticide laws and regulations through an agreement with the federal government. TDA regulates pesticide registration and the agricultural use of pesticides and licenses commercial, noncommercial, and private applicators and pesticide dealers. The department also enforces state and federal agricultural worker protection laws.

Chapter 75 of the Texas Agriculture Code covers herbicide regulations; Chapter 76 covers pesticides. Chapter 125 of the code is the Texas Agricultural Hazard Communication Act (AHCA). Sometimes called the “farm worker right-to-know law,” AHCA contains guidelines and rules for providing information about certain chemicals to agricultural workers who use and store them. Workers in certain cases must be provided with documents containing chemical hazard and safe handling information about the chemicals to which they are exposed. The AHCA also requires that information about the storage of certain chemicals be provided to area fire departments. Under the act, certain information also must be submitted to

TDA, which is required to develop on-going training programs for agricultural workers.

DIGEST:

CSHB 1144 would combine pesticide and herbicide regulations into one chapter of the Agriculture Code and make a number of changes to the laws on pesticides.

The bill would also repeal the Agricultural Hazard Communication Act. TDA would be required to adopt worker protection standards for pesticides if the federal worker protection standard was not adopted or under consideration for adoption. TDA could adopt other rules for protecting the health, safety and welfare of farm workers and pesticide handlers. The bill would retain provisions requiring that certain information about stored chemicals be furnished to fire departments.

The bill would require the Agricultural Resources Protection Agency to meet annually instead of quarterly and allow the public an opportunity to appear before the agency annually rather than every six months.

It also would make pesticide dealer licensing biennial rather than annual; change insurance requirements for commercial applicators; require TDA to cooperate on the development and implementation of a state management plan for pesticides in groundwater; and eliminate an exemption from licensing fees currently allowed pesticide applicators who work for certain governmental agencies.

Pesticide registration and labeling. The bill would exempt from state registration requirements pesticides not for use in Texas but being manufactured, transported, or distributed only for use outside of the state. It would remove a requirement that labels on pesticides distributed in Texas state their use classification.

The bill would eliminate a requirement that before a pesticide can be registered TDA has to find that its composition warrants any claims of effectiveness. TDA would be authorized to charge a fee equal to the registration fee, prorated on a monthly basis, for issuing an experimental use permit.

If TDA issued a pesticide stop-use order because a pesticide was not registered, the person responsible for registering the pesticide would have to take necessary actions to remedy the situation, including reimbursing others for the costs of complying with the order. TDA could authorize the use of pesticides subject to stop-use orders if it determined the pesticides did not present a hazard to public health, safety or welfare.

The Texas Feed and Fertilizer Control Service could not register a fertilizer with a pesticide requiring TDA registration unless the pesticide was first registered with TDA.

Pesticides registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) requirements would have to be labeled according to FIFRA. Pesticides not subject to FIFRA requirements would have to meet current state labeling requirements.

Pesticide dealers and applicators. Pesticide dealer licenses would expire biennially on the date they were granted, unless TDA adopted a standardized system under which all licenses expired on specified dates. Noncommercial government agencies would no longer be exempted from noncommercial applicator license fees.

The bill would repeal provisions that a commercial applicators license can be issued only to a business with a licensed applicator employed at all times and that failure to employ a licensed applicator is grounds for revoking the license. It also would eliminate requirement that on-site applicators be under the supervision of licensed commercial applicators. Persons working for licensed applicators would have to be knowledgeable about rules and regulations governing the use of pesticides instead of knowledgeable about the particular pesticide being used.

A licensed applicator could not supervise an applicator whose license or certificate was under suspension or revocation.

Pesticide dealers could only distribute restricted-use or state-limited-use pesticides to licensed or certified applicators or to licensed veterinarians for use as a drug or medication in their practice. Licensed pesticide dealers would have to keep records on restricted-use and state limited-use pesticides;

TDA would be required to adopt rules for such record-keeping. Private applicators also would be required to keep records on restricted-use and state-limited-use pesticides.

CSHB 1144 would define an “applicator business” as a licensed commercial applicator applying state-limited-use or restricted-use pesticides or regulated herbicides for compensation. The liability insurance carried by these businesses for property damage and bodily injury could provide general aggregate coverage of \$200,000 for each occurrence. The bill also would specify that the current requirements of \$100,000 for property damage and \$100,000 for bodily injury would also be acceptable as long as coverage was not less than \$100,000 for each occurrence.

Other pesticide controls. CSHB 1144 would eliminate the requirement that TDA add a pesticide to the state-limited-use list if directed to by the Texas Natural Resource Conservation Commission (TNRCC) and instead allow TDA to consider adding the pesticide. The bill also would make optional a current requirement that TDA provide sample tests of pesticides on request.

TDA could stop the use or distribution of a pesticide found to be in violation of pesticide regulations, and order a person not to sell, distribute or use the pesticide until it determined that the pesticide would not present a hazard to public health, safety or welfare. TDA could inspect equipment used to apply herbicides and prohibit the use of certain equipment if it would be hazardous.

CSHB 1144 would eliminate a requirement that reports claiming damages from pesticides be filed within 31 days following an alleged occurrence or before a crop reached a certain stage; it would allow appropriate regulatory agencies to adopt procedures governing the investigation of a report claiming adverse effects from an application of a pesticide.

TDA would have to cooperate with the Texas Groundwater Protection Committee (TGPC) to develop and implement federally mandated state management plans for pesticide in groundwater if the Environmental Protection Agency adopted a rule requiring such plans. The department

could not adopt water quality rules less stringent than those adopted by the TNRCC, pursuant to TGPC recommendations.

Herbicide regulation. CSHB 1144 would include herbicide regulation with the Agriculture Code chapter regulating pesticides and add a new subchapter with some provisions specific to herbicide regulation.

The bill would allow county commissioners courts to implement certain restrictions on herbicide use. These herbicide rules would be exempted from a statutory requirement that TDA conduct at least five regional hearings throughout the state before adopting any herbicide rule.

Effective date. The bill would take immediate effect if finally approved by a two-thirds record vote of the membership in each house.

SUPPORTERS
SAY:

CSHB 1144 would consolidate and streamline the state's agricultural pesticide and laws, making it easier to understand and enforce pesticide and herbicide regulation. The bill would also strengthen enforcement of pesticide laws and enhance public safety by prohibiting applicators whose licenses were suspended or revoked from working under the supervision of another licensed applicator.

Repealing the Agricultural Hazard Communication Act would not threaten the rights of agricultural workers. Since 1995, the state has been protected by federal pesticide information standards and the Texas right-to-know laws are no longer needed. The Texas laws only apply to about 10 percent of agricultural producers, while the the federal standards cover all of them. In fact, federal requirements address some areas that state laws do not. TDA would be required to adopt standards if the federal standards are not adopted or under consideration.

CSHB 1141 would retain some provisions of the state right-to-know law, such as some maintenance of records and notification of emergency personal. These provisions require fire departments to be notified about large quantities of certain pesticides if they are stored near residential areas. This provides a measure of safety both to the public and firefighters who need to know where chemicals are stored in case of a fire or other emergency.

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

It also is reasonable to expedite the process of returning a pesticide to the market if it TDA determined that the stop-use order was not necessary. TDA would not be authorized to let a product return to the market if it were a threat to public health or safety.

CSHB 1141 would require pesticides subject to federal registration to meet those requirements while ensuring that others met state requirements. This provision would guarantee that federal requirements took precedence while ensuring that all pesticides were subject to some labeling requirements.

Allowing pesticide dealer licenses to expire biennially instead of annually would cut down on unnecessary paperwork and cut costs by approximately \$1,768 according to the bill's fiscal note. There are few changes in these licenses from year to year and it is inefficient to have every license come due on December 31.

CSHB 1144 would eliminate current provisions that limit each type of insurance claim to \$100,000 but would keep the total required insurance at \$200,000. Allowing an aggregate policy of \$200,000 for bodily injury and property damage would be consistent with policies required in other industries. This would actually increase certain payments; a bodily injury claim for \$125,000 that would have been limited to \$100,000 under current law could be paid under CSHB 1144.

TDA is the lead agency for pesticide regulation, with responsibility for registering products, monitoring the list, and enforcing pesticide laws. It should have the ultimate authority concerning adding pesticides to the state-limited-use list. In addition, TDA should play a role in developing any state management plans for pesticide in groundwater. In this way, the state would 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.

There is no need for the Agricultural Resources Protection Authority to meet quarterly. Annual meetings would be sufficient for the authority to carry out its duties.

OPPONENTS
SAY:

CSHB 1141 would eliminate the farm worker right-to-know provisions under state law, leaving farm workers at a greater risk of harm from agricultural chemicals, eliminate an important role of TNRCC in pesticide regulation, and unwisely loosen some requirements for pesticide registration.

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 that certain records be kept for 30 years. Federal standards are vaguer, stipulating that workers be told about pesticides sometime within their first five days of work in recently sprayed fields.

There is no need to repeal the state right-to-know law because it complements rather than conflicts with federal law. While the state right-to-know law covers a small percentage of employers, these are large producers who employ a majority of seasonal workers.

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. Similarly, it would be unwise to allow TDA to return any pesticide to the market if a stop-use order has been issued for the product.

By requiring some pesticides to meet only federal labeling requirements, CSHB 1141 would eliminate for these pesticides any state requirements that may be more stringent.

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 a significant reduction in the role played by the state's environmental agency in protecting groundwater from pesticides. TNRCC regulates groundwater

quality and should retain authority to have pesticides added to the state-limited-use list.

Allowing an *aggregate* of \$200,000 in insurance per occurrence, instead of requiring 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 suffered injuries or property owners with no way to receive compensation for damages.

The Agricultural Resources Protection Authority should continue to meet quarterly rather than annually, and the public should retain the opportunity to appear before ARPA every six months. The role of the authority in pesticide regulation oversight should be strengthened, rather than weakened, and agencies should be under some obligation to follow ARPA comments or to explain deviations from the recommendations.

OTHER
OPPONENTS
SAY:

Instead of being repealed, the state farm worker right-to-know law should be transferred to the Texas Department of Health to ensure that there is no conflict of interest between promoting agriculture and regulating pesticides and protecting the health and safety of farm workers.

The regulation of pesticides should be transferred to another state agency such as the Department of Health or TNRCC to avoid a similar conflict of interest with the department's charge to promote agriculture.

NOTES:

The fiscal note to the bill estimated that it would result in a gain to general revenue of approximately \$200,000 a year, mostly due to requiring previously exempt noncommercial governmental agency employees to pay pesticide applicator licensing fees.

The committee substitute made numerous changes in the bill, including making ARPA meetings annual rather than quarterly; prohibiting pesticide dealers from distributing restricted-use or limited-use pesticides except in certain cases; allowing veterinarians to purchase certain restricted-use pesticides; and allowing for an aggregate insurance policy of \$200,000.

During the 74th Legislature, a similar bill, HB 2479 by B. Turner, was reported favorably by the House Environmental Regulation Committee and placed on the House Calendar, but was recommitted on a point of order.