

SUBJECT: Requiring school districts to give preference to Texas products

COMMITTEE: Public Education — committee substitute recommended

VOTE: 9 ayes — Sadler, Dutton, Dunnam, Grusendorf, Hochberg, Lengefeld, Oliveira, Olivo, Smith

0 nays

WITNESSES: For — Susan Combs, Texas Department of Agriculture; Ray Prewett, Texas Citrus Mutual; Durwood Tucker, Texas Farm Bureau; Jerry Walzel, Texas Produce Association

Against — None

BACKGROUND: Sec. 2155.444 of the Government Code requires all state agencies to give preference to Texas and United States products, including agricultural products, when the cost and quality are equal to other products.

DIGEST: CSHB 597 would require school districts when purchasing goods, including agricultural products, to give preference to Texas products if the cost to the district is equal and the quality is comparable. If no Texas product was equal in cost or comparable in quality, districts would have to give preference to U.S. products over foreign products. Districts also would have to give preference to Texas vegetation for landscaping purposes. Districts could not adopt purchasing specifications that unnecessarily excluded Texas products.

Districts that failed to give a preference to Texas or U.S. products would be subject to a civil penalty of up to \$5,000 in addition to injunctive relief or other legal remedies. Contracts awarded in violation of the bill would be void. The commissioner of education could request the attorney general, or a county or district attorney, to bring a civil action to collect the penalty.

CSHB 597 would allow districts to receive assistance from the Texas Department of Agriculture to implement the requirements of the bill, including information on the availability of agricultural products. It would also require the Texas Education Agency (TEA) to conduct an analysis of purchases by districts and the effectiveness of this legislation and report to the

governor, the lieutenant governor, and the speaker by January 1, 2001.

This bill would take effect September 1, 1999.

**SUPPORTERS
SAY:**

School districts make a tremendous amount of purchases for goods every year, including agricultural products served in school cafeterias. Currently, state agencies are required to give preference to Texas and U.S. products, but no such requirement is placed on school districts. CSHB 597 would require districts to give such purchasing preferences just like state agencies.

CSHB 597 would also go beyond the preference law in the Government Code by including a civil penalty for failure to follow the law. Without including any penalties, there would be no reason for districts to follow this law. However, even if a district failed to follow the provisions of the law, a penalty would not have to be imposed. The purpose of this legislation is not to take money from districts in the form of penalties, but to make them aware of their purchasing practices and ensure that they take Texas products into account.

Another important function of this legislation is to prohibit districts from drafting product specifications that exclude Texas products. While it may not be done intentionally, often districts request products with such specificity that they exclude Texas products because they are packaged differently than other products. The quality of Texas products may be as good or better, but because they are packaged in a different form or available in different quantities, the Texas products may be excluded.

The purchasing of Texas products would be beneficial to school districts. Texas agricultural products may be fresher than those purchased from out of state. Purchasing Texas products also would keep taxpayer dollars within this state, which would help to ensuring the continued success of Texas businesses. Those businesses would then continue to pay taxes, a significant portion of which would go back into supporting Texas schools.

The Texas Department of Agriculture would give districts substantial help in developing purchasing criteria and identifying available Texas products as part of the Go Texan campaign, which would be implemented by HB 2719 by Swinford, also on today's calendar.

OPPONENTS
SAY:

Imposing a penalty on districts for failing to give a preference to Texas products in purchasing would penalize school children for the business operation decisions of school districts. Any penalty imposed would likely come directly from a district's operations budget. There are no such penalties imposed for violating the state purchasing preference law. While purchasing Texas products is a laudable goal, monetary penalties against districts for failing to do so would be unnecessarily punitive.

The vague language of CSHB 597 could make it difficult for a district to know whether it would be violating the law. The bill would require products to be "comparable" but does not define such a standard. The bill also would prohibit districts from adopting specifications that "unnecessarily exclude" Texas products, but also fails to provide any standards for what would constitute an unnecessary exclusion.

OTHER
OPPONENTS
SAY:

Instead of imposing penalties in this legislation, the next legislature should examine the analysis of district purchasing developed by TEA and then determine if penalties need to be imposed in order to enforce Texas preferences in purchasing.

NOTES:

The committee substitute to HB 597 changed the original bill by:

- ! providing for a civil penalty;
- ! allowing the attorney general or a county or district attorney to bring a civil action at the request of the commissioner of education;
- ! allowing the voiding of contracts awarded in violation of the bill;
- ! requiring districts to give preference when Texas products were of equal cost and comparable quality rather than equal cost and quality;
- ! prohibiting districts from adopting purchasing policies that exclude Texas products;
- ! adding products processed in Texas to those that should be given preference and including a definition of processed;
- ! removing a requirement that landscape vegetation purchased by a district be native to the region;
- ! removing open-enrollment charter schools from the requirements of the bill; and
- ! requiring TEA to conduct an analysis of district purchases.

The companion bill, SB 331 by Lucio, has been referred to the Senate

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Education Committee.