

SUBJECT: Guidelines for state agricultural policy

COMMITTEE: Agriculture and Livestock — favorable, without amendment

VOTE: 8 ayes — Swinford, McReynolds, Christian, Hardcastle, Miller, Brown, Green, Hupp

0 nays

1 absent — Kolkhorst

WITNESSES: For — Zach Brady, Texas and Southwestern Cattle Raisers Association; Matt Brockman, Independent Cattlemen’s Association of Texas; George Christian, Texas Forest Industries Council; Gary Joiner, Texas Farm Bureau; James Presnal, Texas Nursery and Landscape Association; Ray Prewett, Texas Citrus Mutual; Denise Rhodes, Syngenta Corp. and Texas Agri-Women; Jerry Walzel, Texas Produce Association; Don Ward, Livestock Marketing Association of Texas; Tony Williams, Texas Cotton Ginners’ Association; Ross Wilson, Texas Cattle Feeders Association

Against — Jack Lee

On — Susan Combs, Texas Department of Agriculture

BACKGROUND: The 76th Legislature enacted HB 2 by Swinford et al., which added Chapter 2 to Title 1 of the Agriculture Code, establishing the state’s agricultural policy. Sec. 2.003 outlines 16 areas that the agriculture policy must consider and address. HB 2 also created a Joint Agricultural Policy Committee to study the condition of agriculture, current programs in support of agriculture, and the state’s role in preserving the agriculture industry.

DIGEST: HB 499 would amend Agriculture Code, sec. 2.003 to expand on the state’s agriculture policy by requiring that the policy:

- ! ensure that the agricultural use of water is assigned a high priority;
- ! ensure efficient and well-maintained farm-to-market road systems and adequate transportation at competitive rates for agricultural products;

- ! prevent the imposition of state laws or regulations that would be inconsistent with the efficiency and profitability of agricultural enterprises or would have an adverse effect on the health, safety, or welfare of Texas citizens;
- ! encourage tax policy that promotes the agriculture industry;
- ! facilitate access to loans and grants authorized by the Texas Constitution for agricultural producers;
- ! promote the marketing of agricultural commodities and enhance and expand sales of Texas raw and processed agricultural products;
- ! encourage promotional and educational programs for agriculture and maintain long-term support for agricultural research while improving accountability and gathering public input on research;
- ! encourage efforts to sustain long-term productivity by conserving and protecting Texas' natural resources;
- ! enhance, protect, and encourage the production of food and other agricultural products;
- ! promote and protect agricultural activities that are established before nearby non-agricultural activities by establishing the presumption that the agricultural activities:
 - ! are reasonable and not a nuisance, unless the activity has a substantial adverse effect on public health and safety, and
 - ! do not adversely affect public health and safety if the activities comply with existing laws and regulations;
- ! encourage the development and improvement of farmland consistent with the philosophy of a private property-rights state;
- ! continue to support safe food production through regulations based on sound scientific evidence;
- ! actively address the development of federal policy that affects Texas;
- ! seek opportunities to improve the sustainability and effectiveness of rural fire services; and
- ! promote efforts to increase the value of Texas agricultural products.

HB 499 would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2001.

**SUPPORTERS
SAY:**

HB 499 would define more clearly what the relationship between agriculture and the state of Texas should be. The proposed policy statements, reflecting the recommendations of the Joint Agricultural Policy Committee, would

serve as guidelines for the development of future agricultural policy. HB 499 would match a specific policy guideline with each of the 16 broad policy areas in existing law.

Although agriculture is the state's second largest industry, Texas lacks a specific statewide agriculture policy. A consistent policy is necessary, and HB 499 would provide a road map to guide future legislatures, state agencies, and other decision-makers in issues affecting agriculture.

A detailed agriculture policy also would help to educate the public about the importance and impact of agriculture in Texas. Such a policy would help to ensure that future rules and regulations do not hamper agriculture. HB 499 also would encourage the development of support systems to ensure the continued vitality of agricultural communities.

The agricultural industry helps create jobs, develop rural areas, and pump money into the economy. HB 499 would establish standard agricultural policies that are necessary in an increasingly urbanized state. The bill would ensure that state government considers the needs of the agricultural community even as rural areas lose representation because of redistricting and increasing urbanization. The Joint Agricultural Policy Committee traveled all over the state, and its recommendations reflect the agricultural community's dominant concerns.

HB 499 would not infringe on a private individual's cause of action in a nuisance action involving agricultural activities that pre-date nearby non-agricultural activities. Agriculture Code, Chapter 251 fully addresses those concerns. Sec. 251.003 states that if an agricultural operation's physical facilities expand, the established date of operation for each expansion is a separate and independent established date of operation. Thus, the policy set by HB 499 would not raise any new hurdle for an individual in establishing a nuisance claim.

**OPPONENTS
SAY:**

Portions of HB 499 could weaken a private individual's right to a cause of action for an environmental nuisance. Because the bill would create the presumption that an agricultural activity established earlier than a nearby non-agricultural activity is reasonable, private individuals might find it more difficult to use nuisance laws to protect themselves and their property. For example, a small feed lot could exist at the time that a non-agricultural

activity was established next door. If the feed lot were to increase from 100 hogs to 1,500, under current law the non-agricultural entity might have a cause of action that did not exist before. Under HB 499, the activity could be considered unreasonable and a nuisance only if it had “a substantial adverse effect on public health and safety,” which could be an extremely high hurdle to prove a nuisance. Also, by stating that the adverse effect must be on “public health and safety,” HB 499 would seem to disregard the possible effect on an individual if the effects were not more widespread.

Also, HB 499 would create the presumption that an agricultural activity established before a non-agricultural activity does not adversely affect public health and safety if the agricultural activity complies with existing laws and regulations. However, not all agricultural activities are covered by federal, state, or local laws and regulations. For example, a feed lot that is too small to fall under regulation still could be large enough to cause a nuisance.

NOTES:

The companion bill, SB 331 by Haywood, passed the Senate on the Local and Uncontested Calendar on March 7 and was reported favorably, without amendment, by the House Agriculture & Livestock Committee on March 15, making it eligible to be considered in lieu of HB 499. SB 331 differs from HB 499 in including noxious plant and brush species under eradication or control, and adds “exclusion,” of injurious pests that affect crops and livestock. In addition to farmland, SB 331 also would encourage the preservation of "ranchland, timberland, and other land devoted to agricultural purposes."