

- SUBJECT:** Regulating production, storage, or transfer of ammonium nitrates
- COMMITTEE:** Agriculture and Livestock — favorable, without amendment
- VOTE:** 8 ayes — Gonzalez Toureilles, Anderson, B. Brown, Crabb, Hardcastle, Kleinschmidt, Rios Ybarra, Swinford
- 0 nays
- 1 absent — Heflin
- WITNESSES:** For — (*Registered, but did not testify:* Donnie Dippel, Texas Ag Industries Association; Tommy Engelke, Texas Agricultural Cooperative Council; James Grimm, Texas Poultry Federation; Jim Reaves, Texas Nursery and Landscape Association; Bob Turner, Texas Sheep and Goat Raisers, Texas Poultry Federation)
- Against — Lauren Crawford, Texas Municipal League
- BACKGROUND:** A person must hold a certificate of registration from the Texas Feed and Fertilizer Control Service to sell ammonium nitrate or ammonium nitrate material. The Texas Feed and Fertilizer Control Service is administered by the Office of Texas State Chemist (OTSC), which is part of AgriLife Research under the Texas A&M System.
- Agriculture Code, ch. 63, subch. I defines ammonium nitrate and ammonium nitrate material; requires registration with OTSC for sale of these materials; requires security measures for storage and daily inspection of inventory; specifies maintenance of records; and sets criminal penalties for violations, including a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) for purchasing ammonium nitrate with the intent to manufacture an explosive device.
- Texas Administrative Code, title 4, sec. 65.6 requires that sellers of ammonium nitrate and ammonium nitrate materials submit a registration and pay a fee on a yearly basis to OTSC.
- DIGEST:** HB 2527 would provide that state law would preempt or supersede any city, county, or other local subdivision ordinance, order, or rule governing

the packaging, labeling, sale, distribution, use, or application of commercial regulated fertilizer under Agriculture Code, ch. 63.

HB 2527 would amend Agriculture Code, sec. 63.152 (a) to require that any person who produces, stores, or transfers ammonium nitrate or ammonium nitrate material would have to hold an OTSC certificate of registration. It also would require that the application from ammonium nitrate facility include:

- the name, address, and telephone number of each ammonium nitrate facility owned by the applicant; and
- the name of the person designated as the point of contact for each facility owned by the applicant.

The requirements would apply only to applications for certificates of registrations filed with the OTSC on or after the bill's September 1, 2009, effective date.

**SUPPORTERS
SAY:**

HB 2527 would provide a uniform and synchronized system of regulation of commercial fertilizer, especially ammonium nitrate, on a statewide basis. The state acted before the federal government in regulating ammonium nitrate facilities, and the bill would bring the state law into harmony with the federal regulations. There are 122 ammonium nitrate facilities registered with the OTSC, and while none manufactures ammonium nitrate, some facilities warehouse ammonium nitrate even though not offering it for sale. These owners are not obligated to register with the OTSC but do so willingly. HB 2527 would provide clear authority for OTSC to regulate and monitor all facilities that manufacture, store, or transfer ammonium nitrate.

Last session, the Legislature recognized the dangers posed by the possible misuse of ammonium nitrate by adding the restrictions in the Agriculture Code. Although ammonium nitrate is widely used as a fertilizer for agricultural purposes, it is also an explosive substance and commonly used in improvised explosive devices. Timothy McVeigh used ammonium nitrate in the Oklahoma City bombing in 1995, in which 168 people died. Ammonium nitrate also holds devastating potential if used or stored incorrectly. For example, a 1947 explosion on a French fertilizer ship in Texas City ignited refineries that burned for six days. Adding authority to regulate those who produce, store, or transfer ammonium nitrate would help maintain a high level of protection for Texans.

Landscaping and lawn services that apply ammonium nitrates should have uniform state standards and not be subject to a patchwork of local regulation and ordinances. Jurisdictional limits among cities are not always obvious. Keeping up with differing rules on using and applying commercial fertilizer can be burdensome and can raise the price for the consumer. Regulation should be left to the state, which has the authority, and OTSC, which has the expertise.

State preemption commonly exists for other public health and safety regulations. Cities and counties are not allowed to regulate meatpacking nor operations of veterinarians. HB 2527 would keep commercial fertilizer regulations under professional scientific oversight. Concerns about application of any type of fertilizer in potential flood plains or recharge zones for aquifers already are addressed by Environmental Protection Agency regulations. Federal and state agencies, rather than cities or counties, should provide oversight and regulation in these matters.

OPPONENTS
SAY:

The Legislature should not enact laws that preempt broadly or supersede local government's ability to pass more stringent regulations. Extra regulations may be needed for a potentially dangerous substance like ammonium nitrate. Even in amounts less than used for an explosive device, ammonium nitrate fertilizer can pose risks to health and safety, such as if applied in an area prone to flooding or in an aquifer recharge zone. Jurisdictions should be granted local control to exercise their police power to abate nuisances. Granted, a city cannot regulate a meatpacking plant, but it has the authority to prosecute should the owner start discarding skins or other offal in an improper manner. The same procedure should apply to those improperly applying fertilizers.

NOTES:

The companion bill, SB 1309 by Hegar, was reported favorably, without amendment, by the Senate Agriculture and Rural Affairs Committee on April 20 and recommended for the Local and Uncontested Calendar.