

- SUBJECT:** Prohibiting mandatory participation in an animal identification system
- COMMITTEE:** Agriculture and Livestock — favorable, without amendment
- VOTE:** 7 ayes — Miller, Anderson, B. Brown, Aycock, Gallego, Garcia, Heflin  
0 nays
- WITNESSES:** For — Pam Cantwell; Marida Favia del Core Borromeo, Exotic Wildlife Association; Jimmy Gaines, Texas Landowners Council, Inc.; Tony McClenny; Judith McGeary, Farm and Ranch Freedom Alliance; Don R. McLeod, Brad Stufflebeam, Texas Organic Farmers and Gardeners Association (*Registered, but did not testify*: Randy Givens; Michael A. McGeary; Mary Beth Westcott; Merrylynn Gerstenschlager, Texas Eagle Forum; Jeremiah Griffin)
- Against — Jay Gray, Texas Farm Bureau; Ken Hodges, Texas Farm Bureau; Diana Moore; Warren Moore; Josh Winegarner, Texas Cattle Feeders Association
- On — Bob Hillman, Texas Animal Health Commission (*Registered, but did not testify*: Shayne Woodard, Texas Association of Dairymen; Marc Levin, Texas Public Policy Foundation)
- BACKGROUND:** In 2004, the U.S. Department of Agriculture (USDA) created the National Animal Identification System (NAIS) as a standard framework for animal identification programs. NAIS identifies and tracks animals as they come into contact with non-herdmates. The system includes three phases:
- registration of premises where livestock are located;
  - registration of animals (with a unique number for each animal); and
  - reporting of the movement of each animal from premise to premise.
- The long-term objective of NAIS is to identify premises and animals that have been exposed to a disease within 48 hours after discovery of an outbreak. Currently, NAIS is voluntary at the federal level.
- The Texas Animal Health Commission (TAHC) began registering premises on a voluntary basis in 2004. During the 2005 regular session, the 79th Legislature enacted HB 1361 by Hardcastle, which authorized the

TAHC to develop and implement an animal identification program consistent with NAIS. According to the legislation, the purpose of the program is to trace disease-infected animals or animals that may have been exposed to a disease. The law authorizes TAHC to require official identification numbers for animal disease control, animal emergency management, and other commission programs. The commission also may establish a registration fee and a date by which all premises must be registered.

Agriculture Code, sec. 161.056(g) and (h) make noncompliance with an order or rule under the animal identification program a class C misdemeanor (maximum fine of \$500), with repeat offenses a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000).

In 2006, TAHC proposed rules to implement the first part of an animal identification system that would have required premises where livestock and poultry are kept to be registered with the state. Under the voluntary program, 10,000 such premises had registered with TAHC. In a February 2006 hearing, TAHC postponed action on the proposed mandatory registration rules.

**DIGEST:**

HB 461 would amend Agriculture Code, sec. 161.056 to make voluntary any animal identification program developed and implemented by Texas Animal Health Commission.

The commission still could establish fees and determine a registration deadline for premises participating in the animal identification program. The commission no longer could require the official use of animal identification numbers as part of programs for animal disease control, animal emergency management, and other commission programs, but the commission could permit the use of such numbers.

The bill would repeal the offense for failure to comply with animal identification system provisions.

The bill 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, 2007.

**SUPPORTERS  
SAY:**

HB 461 would ensure that any animal identification system implement by TAHC be voluntary rather than mandatory. The current process employed

by TAHC to identify and track animal functions effectively. Regional or statewide quarantines are imposed on animal movement during a disease outbreak. If NAIS were to be implemented, TAHC still would have to engage in an extensive investigation in order to quarantine a disease. A voluntary animal identification system would place fewer burdens on the state and its citizens than would a mandatory system.

Certain animals already are subject to TAHC rules. Imposing a mandatory animal identification system is unnecessary because substantial forms of identification and traceability already are available. Current identification devices include ear tag numbers indicating brucellosis vaccinations. Also, hot-iron brands are used to prove livestock ownership throughout the state. Small flocks or herds typically are not identified but do not pose as much of a risk as large groups.

By making participation in the animal identification system voluntary, HB 461 would allow animal owners to determine whether the program was worthy of participation, and they could choose to register their animals if the system proved to be beneficial. Letting the market drive the use of NAIS would be more efficient and fair.

**Effectiveness and cost.** Establishing the NAIS would be an extensive and all-encompassing objective. More effective methods than a large, centralized system exist to prevent and trace diseases. Other options include improved veterinary training and educational programs for animal owners and the enhanced use of rapid diagnostic tools and scientific-modeling to identify high-risk situations.

NAIS would be a costly program to implement statewide. The fee for premise registration would create a financial burden for animal owners, especially small producers who are subject to the same fees as large commercial operators. Animal owners should not be required to pay for a system designed to benefit the general public.

**Privacy.** Establishing an animal identification system dramatically would increase government oversight of animals and their owners. Being forced to register with the government would constitute an invasion of privacy, and TAHC should not have the authority to impose this form of government intrusion. Although the current legislation would permit only premise registration, the next two components of NAIS — tagging and

tracing animals — would constitute an especially intrusive form of government oversight.

Owners should not be forced to provide the government with information to be stored and possibly shared with others, with no assurances that the information would remain confidential. The information generated by NAIS could be used against the agricultural industry, and market prices easily could be manipulated with new information available on animals in Texas.

**Compliance.** Making animal identification voluntary at the state level would ease compliance concerns. Children participating in 4-H or Future Farmers of America should not be criminalized for failing to register premises. Moreover, mandating compliance with premise registration would create enforcement difficulties, given the widespread dispersion of animal premises across the state.

Compliance with NAIS would be justified only in certain circumstances. The governor could mandate the system's implementation under an executive order in case of an emergency disease outbreak, and as such, NAIS can be implemented if it proved to be an important and necessary program.

**History.** When HB 1361 was enacted in 2005, the USDA was considering the implementation of a mandatory animal identification system. Shortly thereafter, USDA called for voluntary participation. The backlash against the animal identification system prompted the TAHC to delay the implementation of the system until after this Legislative session, giving the current Legislature an opportunity to consider changes to the statute.

OPPONENTS  
SAY:

HB 461 would undermine TAHC's ability adequately to protect the state's livestock and public health. As part of its mission to ensure animal health, TAHC needs proper tools to respond to animal disease emergencies. The current law allows the commission to use official identification numbers, register premises, and move quickly in case of an emergency, such as an outbreak of avian flu. These provisions are justified because of the potential for infectious animal disease or a terrorist using animal pests or diseases to devastate the state's food supply.

**TAHC's ability to control animal diseases.** TAHC administers valuable programs to identify disease and infestation problems. The agency also

works to manage and eliminate dangers to the state. Successful animal disease eradication requires the identification and participation of animals across Texas in TAHC's programs. The current law provides important means of combating the spread of contagious diseases that may damage Texas agriculture, harm the food supply, and devastate public health.

The bill would reduce the agency's authority to use official identification numbers for its various programs, and if enacted, HB 461 could limit the agency's ability to carry out important duties. The agency would be less able to ensure animal health. If programs were made voluntary, TAHC would not be able to achieve the level of animal identification necessary for effective disease control.

**Livestock industry.** Certain identification processes are required when transporting animals across interstate and international borders. Several TAHC programs use identification components to administer these processes, such as the agency's efforts to stamp out cattle tuberculosis, cattle brucellosis, scrapie in sheep and goats, and equine infectious anemia. With oversight by TAHC, the state's livestock industry complies with standards imposed by other states, the federal government, and other countries.

HB 461 could impede TAHC's ability to ensure compliance with these standards. The agency no longer would be able to use certain identification processes to administer important programs. In that case, the state's livestock industry could become quarantined, and HB 461 could negatively impact the Texas economy. If NAIS were made mandatory at the federal level, TAHC's authority to oversee compliance with its provisions also would prove important.

**NAIS implementation.** The current authority given to TAHC to register premises is permissive and not mandatory. The agency lacks the resources and authority to suddenly implement a mandatory program. To implement such a system, TAHC would have to follow standard rule-making procedures for state agencies.

After enactment of HB 1361 in 2005, TAHC followed these procedures to develop specific rules for premise registration. When USDA said NAIS would be voluntary, the commission allowed the proposed rules to expire. Although TAHC does not have plans to require premise registration,

current law allows the agency to do so in the future as needed. HB 461 would weaken this important standby authority.

The TAHC should be allowed to take steps to implement NAIS if necessary. This effective, organization tool allows for the rapid identification of sick and infected animals. NAIS can prevent the spread of diseases such as avian-flu, foot and mouth disease, and West Nile virus. The NAIS also could serve as an important organizational tool in case of a bioterrorist attack.

**Public information.** USDA designed NAIS over the course of many years, giving opponents ample opportunity to voice their concerns. The department held various symposia and created working groups and committees to ensure public input. A large number of people participated in the process. Information on NAIS was published in many trade publications.

Premise information is minimal and far from invasive . Owners are not now required to disclose the number of animals nor movement of animals. Other components of NAIS, such as tagging and tracking, are far from implementation. Under current law, TAHC does not have the authority to implement the second and third phases of NAIS.

OTHER  
OPPONENTS  
SAY:

The bill would not offer necessary protection against NAIS. The proposed system constitutes a form of ceding jurisdiction over Texas' sovereign land and people to the federal government. NAIS is a violation of states' rights and could lead to the federal seizure of animals and land. Texas should adopt legislation stating that it will never participate in NAIS.