

SUBJECT: Continuing, adopting Sunset recommendations for TDA, other agencies

COMMITTEE: Agriculture and Livestock — favorable, without amendment

VOTE: 7 ayes — Burns, Anderson, Cole, Cyrier, Herrero, Rosenthal, Toth

1 nay — Bailes

1 absent — Guillen

SENATE VOTE: On final passage, April 19 — 31-0

WITNESSES: For — (*Registered, but did not testify*: J Pete Laney, Texas Association of Dairymen, Texas Citrus Mutual, and Texas Conservation Association for Soil and Water; Joy Davis, Texas Farm Bureau; Patrick Wade, Texas Grain Sorghum Association; JC Essler, Texas Poultry Federation; Shayne Woodard, Wonderful Citrus)

Against — None

On — Dan Hunter, Texas Department of Agriculture; (*Registered, but did not testify*: Robert Romig, Sunset Advisory Commission)

BACKGROUND: **Texas Department of Agriculture.** The Texas Department of Agriculture (TDA) was created by the Legislature in 1907. The mission of TDA is in part to partner with Texans to make the state the national leader in agriculture, fortify the state's economy, promote healthy lifestyles, and empower rural communities.

Functions. TDA performs a variety of functions relating to regulation, nutrition, economic development, and marketing for the state's agricultural products. The department also administers state and federal nutrition assistance programs and provides financial assistance for young farmers, rural healthcare facilities, and community infrastructure projects to promote rural economic development.

Governing structure. TDA is led by the commissioner of agriculture, who is a statewide elected official. With the exception of certain boards that have limited rulemaking authority, the commissioner retains final decision-making authority for the department.

Funding. TDA received \$707.5 million in funding in fiscal 2019, most of which came from federal funds for use in administering federal nutrition programs. That year the department also spent \$707.5 million, mostly for nutrition assistance programs. In fiscal 2019, TDA generated nearly \$32 million in license and fee revenue and deposited \$2.5 million that was in excess of the amount appropriated for expenditures to general revenue.

Staffing. In fiscal year 2019, TDA employed 614 full-time positions. About half of these positions are located in the department's Austin headquarters and the remainder are spread across the department's regional offices, livestock export facilities, and testing laboratories.

TDA will be discontinued September 1, 2021, if not continued in statute.

Texas Boll Weevil Eradication Foundation. The Texas Boll Weevil Eradication Foundation was created by the Legislature in 1993 to eliminate the boll weevil from Texas cotton fields in the most efficient, cost-effective, and environmentally sensitive manner possible.

Functions. The foundation's functions include detecting and monitoring boll weevil infestations, treating infested areas with pesticides, maintaining areas of eradication, and treating instances of re-infestation.

Governing structure. The foundation is a quasi-governmental entity led by a board of directors that is made up of 21 members who serve four-year terms. TDA conducts board member elections, appoints certain members, and provides oversight of the board and foundation, including by exercising rulemaking and enforcement authority.

Funding. The foundation's budget is approved by TDA. The foundation spent \$29.7 million in calendar year 2019, with chemical and treatment

costs and staff salaries and wages accounting for more than three-quarters of spending. The foundation received \$24.8 million in revenue in that year, including \$12.1 million in cotton grower assessments and \$5.5 million in state funding.

Staffing. The foundation employed 106 full-time and 146 seasonal employees in 2019. Employees work at 21 offices across the state, and a majority are located in the Lower Rio Grande Valley area.

Unless continued, the foundation's board will be abolished September 1, 2021.

Prescribed Burning Board. The Prescribed Burning Board was created by the Legislature in 1999 to develop standards for prescribed burning and appropriate standards for the training, certification, and insuring of prescribed burn managers. The board is composed of 13 members who serve two-year terms, and members represent university systems, related state agencies, and private landowners. The board's operations are overseen by TDA.

Early Childhood Health and Nutrition Interagency Council. The Early Childhood Health and Nutrition Interagency Council was established in 2009 to review best practices and develop recommendations related to early childhood nutrition and physical activity. The council issued its final report in 2018 and voluntarily disbanded.

DIGEST:

SB 703 would adopt certain Sunset Advisory Commission recommendations for the Texas Department of Agriculture (TDA), the Texas Boll Weevil Eradication Foundation, the Prescribed Burning Board, and the Early Childhood Health and Nutrition Interagency Council.

The bill would continue TDA and the Boll Weevil Eradication Foundation until September 1, 2023.

Go-Texan Program. SB 703 would require TDA to establish the Go-Texan program to promote and encourage the development and expansion

of markets for Texas agricultural products. TDA would have to adopt rules necessary to administer the program, including rules:

- governing the use of TDA's registered logo;
- providing membership eligibility requirements and grounds for denial of membership;
- establishing membership categories or tiers; and
- specifying membership benefits.

A "Texas agricultural product" would include products that had been produced or processed in the state, including feed for livestock or poultry; fish or aquatic species; livestock, a livestock product, or a livestock by-product; planting seed; poultry, a poultry product, or a poultry by-product; or wildlife processed for food or by-products.

Advisory committees. SB 703 would allow TDA to establish advisory committees to make recommendations on programs, rules, and policies. In establishing an advisory committee, TDA would have to adopt rules regarding:

- the committee's purpose, role, responsibility, goals, and duration;
- the size of and quorum requirement for the committee;
- qualifications, appointment procedures, terms of service, and training requirements for committee members;
- policies to avoid conflicts of interest;
- a periodic review process to evaluate the continuing need of the committee; and
- policies to ensure the committee did not violate open meetings laws.

Consumer protection enforcement. TDA and the office of the attorney general would have to enter into a memorandum of understanding to coordinate the enforcement of consumer protection programs. The memo would have to require TDA to communicate with the consumer protection division of the attorney general's office to identify and avoid potential

duplication of efforts before taking final disciplinary or enforcement action related to consumer protection.

Farmer mental health and suicide prevention program. SB 703 would require TDA to establish a program to raise awareness among farmers of issues relating to mental health and suicide prevention. As part of the program, TDA would have to:

- promote suicide prevention among farmers through a public awareness campaign;
- provide a toll-free telephone hotline for farmer mental health assistance;
- develop a mental wellness plan for farmers affected by a disaster; and
- coordinate suicide prevention activities with other agencies, including the Department of State Health Services.

Inspection and enforcement strategic plan. TDA would have to develop and publish an annual plan for each fiscal year to use the inspection and enforcement resources of the department strategically to ensure public safety and protect agriculture and consumers in the state. TDA would have to seek input from stakeholders when developing each annual plan.

TDA would have to collect and maintain information that accurately showed its inspection and enforcement activities. Each annual plan would have to include a report of the information collected by TDA that showed the department's activities over time. Such information would have to include data regarding violations of statutes or rules, including:

- the number, type, and severity of certain violations;
- the number of major violations for which TDA imposed a penalty or took other enforcement actions; and
- the number of repeat major violations, categorized by license type, if applicable.

TDA would have to publish each annual plan on its website by July 1 of

the year preceding the fiscal year in which it would implement the plan.

Criminal history evaluation. TDA would have to perform the duties of a licensing authority under Occupations Code ch. 53, which governs consequences of criminal conviction, for each license issued by TDA.

Citrus Budwood Advisory Council. SB 703 would reenact statutes requiring the commissioner of agriculture to appoint an advisory council composed of members representing TDA, the Texas A&M University-Kingsville Citrus Center at Weslaco, the citrus nursery industry, and citrus growers and a member with specialized knowledge in citrus diseases and pests.

Current law governing state agency advisory committees, including provisions providing for automatic abolishment of committees, would not apply to the duration of the Citrus Budwood Advisory Council.

The commissioner of agriculture would have to appoint members of the council by January 1, 2022. The council would be recreated on the date the commissioner made the appointments.

Aquaculture license eliminated. SB 703 would eliminate the aquaculture and fish farm vehicle licenses issued by TDA.

On the bill's effective date, a license issued by TDA for aquaculture or fish farm vehicles would expire. As soon as practicable after the bill's effective date, TDA would have to repeal all rules related to such licenses.

Prescribed Burning Board. SB 703 would specify that the Prescribed Burning Board had rulemaking ability in establishing its duties.

The bill also would allow the board to waive any prerequisites to obtaining certification for an applicant after reviewing the applicant's credentials and determining that the applicant held a valid certification from another state that had requirements substantially equivalent to those of Texas.

Criminal history evaluation. The board would have to perform the duties of a licensing authority under current law related to consequences of criminal convictions for each certification issued by the board.

Early Childhood Health and Nutrition Interagency Council. SB 703 would repeal laws governing the Early Childhood Health and Nutrition Interagency Council.

Abolished entities, removal of other provisions. SB 703 would repeal the Texas Rural Foundation and certain other entities. The bill would make certain conforming changes in statute to reflect certain committees, boards, councils, and reports that were previously abolished by law.

The bill also would remove:

- a notary requirement for applications for the home-delivered meal grant program;
- a requirement that the Beef Promotion and Research Council's annual report be sent to certain legislative committees;
- the head of the seed division of TDA from the State Seed and Plant Board; and
- requirements that an applicant to be a licensed seed producer be of good character and have a reputation for honesty.

Other provisions. SB 703 would adopt certain across-the-board Sunset recommendations for TDA and the Texas Boll Weevil Eradication Foundation, including recommendations related to complaints.

The bill would take effect September 1, 2021, and provisions related to an offense would apply only to an offense committed on or after that date.

SUPPORTERS
SAY:

SB 703 would continue the Texas Department of Agriculture (TDA) as Texas, the third-largest agricultural producer in the country, has a continuing need for the agency to regulate and promote its agricultural industry. The bill also would adopt certain Sunset Advisory Commission

recommendations for TDA to ensure good governance. Additionally, the bill would continue the Texas Boll Weevil Foundation due to the state's continuing need to suppress and eradicate the boll weevil.

The bill would re-establish the Go-Texan product promotion program in statute and clearly state the purpose of the program to ensure its effectiveness, efficiency, fairness, and accountability. TDA enforcement and licensing practices also would be updated in the bill, and the department would have to communicate with the office of the attorney general to facilitate better coordination on overlapping consumer protection programs and avoid the duplication of enforcement actions.

SB 703 would clarify the rulemaking authority of the Prescribed Burning Board to better allow the board to govern the safe and responsible use of fire to clear vegetation and reduce the impact of wildfires. The bill also would reenact the Citrus Budwood Advisory Council due to the continuing need for the council to advise on pests and diseases in the citrus industry, and it would allow TDA to establish advisory committees and remove certain outdated committees, councils, and boards that are no longer operational.

The TDA aquaculture program, which licenses individuals who produce and sell fish and shellfish raised in private facilities, does not perform any meaningful enforcement activities nor does it add value to the industry or the public. Because other agencies regulate this industry, the program is unnecessary and should be abolished. SB 703 would address this by removing requirements for aquaculture facilities to obtain a license from TDA while maintaining all licenses, reporting requirements, and other regulation of aquaculture activities by the Texas Commission on Environmental Quality and Texas Parks and Wildlife Department.

While some may want SB 703 to revise other TDA programs, the scope of the bill was limited to Sunset Advisory Commission recommendations and good governance practices. Revisions to other programs could be addressed in separate legislation.

CRITICS
SAY:

SB 703 would not go far enough in reviewing, addressing concerns with, or improving upon certain TDA programs to further the department's mission. Some programs, such as school nutritional programs or the department's agricultural research and promotion activities, could be revised to improve efficiency. Others, such as the seed certification program or implementation of the federal Food Safety Modernization Act, should be further reviewed or revised.