



SB 1172 Amendments

Keep Rodriguez Amendment #3 on the scope of the pre-emption

We urge the conference committee to **keep** State Representative Eddie Rodriguez's Amendment #3 in SB 1172.

The original version of SB 1172 would have prevented cities and counties from regulating any seed "in any manner, including planting seed or cultivating plants grown from seed."

"Cultivating" means "fostering the growth" of the plants, which would include everything people use to grow plants, whether on farms or in residential or commercial settings. **Under normal principles of statutory construction, words in a bill cannot be redundant, so this broad term *must* mean something besides seeds or their planting.**

Throughout the committee hearings, the bill sponsors insisted that the bill was intended to cover **only** seeds. The best way to avoid unintended consequences and lawsuits is to delete the phrase "cultivation of plants," so that the language matches the stated intention. Representative Eddie Rodriguez's amendment does that.

If this amendment is removed, it would create significant ambiguity in the statute on a potentially wide range of topics. Consider some the things people use to "cultivate plants":

- Tilling the soil before planting and for weed control
- Applying manure
- Spraying herbicides (local control over herbicides is partially pre-empted already, but not to the extent that it would be under SB 1172)

The simple fact that water conservation programs became a concern under this bill illustrates the potential scope of the term. "Cultivating plants" could cover many scenarios we simply haven't thought of yet. Taking the phrase out, as the Rodriguez Amendment did, will prevent uncertainty and potential lawsuits over the scope of the law.

Keep Geren Amendment #2 on water

We urge the conference committee to **keep** Geren Amendment #2, which ensures that the pre-emption of regulation of seeds does not stop local governments from addressing the water conservation and drought measures that are so vital to everyone in Texas.

Delete or Limit Geren Amendment H2 #1, which places an unfair burden on local governments

We urge the conference committee to either remove Geren Amendment #1 from the second reading completely, or limit it by deleting subsection (c). This amendment moves into uncharted waters, setting a dangerous precedent that local governments must defend their regulations under an unfair standard.

This amendment was referred to as a “citizen suit” provision to enforce the law. But the provisions of the new section 61.020 differ from normal citizen suit provisions in two significant ways:

1. The only people empowered to bring a suit are those who hold a license, permit, or registration from the state for their business.

This is particularly odd in the context of SB 1172, since farmers are **not** licensed by the state. Without the Rodriguez Amendment, this citizen suit provision would empower a wide range of business entities, including chemical manufacturers, herbicide applicators, and others, to sue local governments. With the Rodriguez Amendment limiting the bill to pre-emption of seed regulation only, the only remaining licensed businesses affected are seed distributors and dealers. Either way, however, farmers and ordinary citizens will **not** benefit.

2. Subsection (c) shifts the burden of proof from the plaintiff, as is the normal rule of law, to the local political subdivision. Moreover, it requires the city or county to defend its regulation by “clear and convincing evidence” – a much higher standard than normal. **This was not discussed in any committee hearing.**

This shift in the burden of proof, combined with holding local governments to a much higher standard than normal, has serious potential repercussions both for seed regulation as addressed in this bill and as precedent for **any** government regulation disputes.

Keep the third reading amendment, unless Geren Amendment H2 #1 is deleted

If Geren Amendment #1 from the 2nd reading is kept in the bill, it is vital that Geren Amendment #1 from the 3rd reading also be kept in. Without the final amendment to the bill from the 3rd reading, the citizen suit provision actually empowers any state-licensed business to sue local governments over any regulation, regardless of the topic.

Submitted by: Farm and Ranch Freedom Alliance, Farm & Food Coalition of East Texas, GROW North Texas, Food Policy Council of San Antonio, Sustainable Food Center, Texas Organic Farmers and Gardeners Association, Texas Local Food and Farm Coalition, and the Waller County Farmers and Ranchers Cooperative.

Contact: Judith McGeary, Judith@FarmAndRanchFreedom.org