H. B. No. 470 By: Burton

A BILL

TO BE ENTITIED

AN ACT making it unlawful, except under the provisions of this Act, for any person to hunt, take, kill, or possess any game bird or game animal in Comal County at any time; to take, kill, or trap any fur-bearing animal in said county; to take or attempt to take any fresh water fish in said county by any means or method; prescribing the legislative policies with respect to the wild life resources of said county; conferring upon the Game and Fish Commission power and authority to regulate by provision, order, rule, or regulation the taking of wild life resources of said county; requiring the Game and Fish Commission to make investigations with respect to depletion and waste of the wild life resources of said county; requiring the Commission to provide an open season or period of time when it shall be lawful to take a portion of the wild life resources of said county; defining depletion and waste; providing for the issuance of the antlerless permits; providing for a public hearing to be held in Comal County and for adequate notice of such hearing and for proper conducting of such hearing; providing for the adoption of the proclamations, orders, rules, or regulations of the Game and Fish Commission; providing for the effective period of regulations; providing for the publication of the regulations; providing that the powers of the Commission are not limited; providing venue for suit to test the validity of the proclamations, rules, regulations, or orders of the Commission; providing a penalty for the violation of any of the providions of this Act as well as any order, rule, or regulation of the Commission; providing for the forfeiture of licenses; making it unlawful to provide a new license and providing a penalty therefor; defining wild life resources; repealing certain laws; providing for the effective date of this Act; providing a saving clause; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. This Act shall apply only to Comal County. It shall be unlawful, except as provided in this Act, for any person to hunt, take, kill, or possess, or attempt to hunt, take, or kill any game bird or game animal in said county at any time; or to take, kill, trap or possess, or attempt to take, kill or trap any fur-bearing animal in said county at any time; or to take or attempt to take any fresh water fish by any means or method in said county at any time. In order to better conserve an ample supply of the wild life resources in said

county, to the end that the most reasonable and equitable privileges may be enjoyed by the people of this state and their posterity in their ownership and in the taking of such resources it is deemed for the public welfare that this Legislature should provide a law adaptable to changing conditions and emergencies which threaten depletion or waste of the wild life resources in said county. The Game and Fish Commission is therefore granted the authority, power and duty to provide, by proclamation, rule, or regulation, from time to time, periods of time when it shall be lawful to take a portion of the wild life resources of said county, when its investigation and findings of fact disclose there is an ample supply of such wild life resources that a portion thereof may be taken which will not threaten depletion or waste of such supply. It shall also, by proclamation, rule or regulation, from time to time, provide the means and the method and the place and the manner in which such wild life resources may be lawfully taken; provided, however, that it shall be unlawful for any person to hunt, take, kill or possess, or attempt to hunt, take or kill any game bird or game animal in said county at any time; or to take, kill, trap or possess, or attempt to take, kill or trap any fur-bearing animal in said county at any time; or to take or attempt to take any fresh water fish by any means or method in said county at any time; unless the owner of the land or the water, or his duly authorized agent, shall give consent thereto.

Section 2. It shall be the duty of the Game and Fish Commission to conduct, from time to time, or continuously, scientific research investigations and studies of the supply, economic value, environment, breeding habits, and so far as possible the sex ratio of the different species of game birds, game animals, fur-bearing animals, fresh water fish, as well as the factors affecting their increase or decrease, particularly with reference to hunting, trapping, fishing, disease, infestation, predation, agricultural pressure, over-population, and any and all other factors that enter into a reduction or an increase in the supply of such wild life resources of the county. Pursuant to and based upon such studies, said Commission shall enter its findings of fact with respect thereto, and if, in the opinion of the Commission, an open season or period of time may be safely provided for any of the wild life resources of said county, said Commission is authorized and directed from time to time to provide an open season or period of time when such wild life resources may be taken. The

proclamation, rule, or regulation issued by the Commission shall be specific as to the quantity, species, sex, age or size that may be taken. Such proclamation, rule or regulation shall provide the method or means that may be resorted to as well as the area, county or portion of the county where such wild life resources shall be taken. In order to prevent depletion or waste of the wild life resources of said county, the Game and Fish Commission shall have authority from time to time by proclamation, rule or regulation to conserve the wild life resources of said county by an open season or period of time when it shall be lawful to take a portion of such wild life resources of said county.

Section 3. When said Commission shall find from its investigations herein provided for, that danger of depletion, as defined in this Act, of any species of fresh water fish, game bird, game animal or fur-bearing animal exists in any portion of the county, it shall be the duty of said Commission to revoke or modify or otherwise amend its order or orders so as to deter or prevent contribution to depletion of such species by the taking thereof. When said Commission shall find that danger of waste, as defined in this Act, of any of such species of fresh water fish, game bird, game animal or fur-bearing animal, or sex thereof, exists in any portion of said county, it shall be the duty of said Commission to issue or amend or revoke or modify such of its rules and regulations as will afford to all of the people of this state the most equitable and reasonable privileges in the pursuit, taking or killing of such species or sex thereof in said area. Provided, further, that when said Commission shall find that danger of depletion exists in any area by virtue of an Act of God, such as from flood, hurricane, fire or drouth, said Commission shall declare a state of emergency as to such species in said area, and its orders, rules and regulations issued under such state of emergency shall take effect and be in full force immediately upon issuance thereof.

Section 4. "Depletion" as used in this Act shall be construed to mean reduction of a species below immediate recuperative potentials by any deleterious cause or causes.

Section 5. "Waste" as used in this Act shall be construed to mean supply of a species or sex thereof sufficient that a seasonal harvest thereof will not prevent or, in the case of over-population, that will aid in the reestablishment of normal numbers of such species.

Section 6. The Game and Fish Commission's proclamation, rule or regulation permitting the hunting or taking of antlerless deer shall not be valid until the owner, or person in charge of the land upon which antlerless deer are to be taken, shall have agreed in writing to the removal by hunting of such antlerless deer from his tract under supervision and regulation of said Commission; and to the number of antlerless deer which may be removed therefrom. No person shall, in any event, hunt or kill any antlerless deer without first having procured an antlerless deer permit issued by the Game and Fish Commission. Such antlerless deer permit shall be issued in such form and under such rules as may be prescribed by the Game and Fish Commission.

Section 7. There shall be a public hearing held in Comal County before such proposed rule, regulation, or order is adopted in the county. Notice of this public hearing must be given in a newspaper published in Comal County at least ten (10) days prior to the date of the hearing. If no newspaper is published in the county, notice of such hearing must be given in the newspaper published in an adjoining county and in the newspaper best known by the inhabitants of the county in which the rule, regulation, or order is to be in effect. The hearing may be conducted by an employee of the Game and Fish Commission upon order of the Commission or upon order of one member of the Commission, it not being necessary for the Commission or some member of the Commission to be present.

Section 8. Orders, rules and regulations shall be adopted by a quorum of said Commission, and only at any regular or special Commission meeting or meetings, of the date and time of which each Commissioner shall have been notified in writing by the Executive Secretary of said Commission (or his assistant in his absence), and such meetings for such purpose shall be held only in said Commissioner's office at Austin, Texas. Any person interested shall be entitled to be heard at such meetings and to introduce evidence as to imminence of waste or depletion, as defined in this Act. Provided, that six (6) members, or the Chairman and five (5) members of said Commission shall constitute a quorum; and provided further that no order, rule or regulation, general or local, shall be adopted at any regular or special meeting of the Commission unless and until a quorum is present.

Section 9. Orders, rules and regulations adopted by said Commission shall become effective fifteen (15) days after their adoption, except in case

of emergency as provided in this Act, and shall continue in full force and effect until they shall expire by their own terms, or are revoked or amended by said Commission.

Section 10. Immediately after its adoption a copy of each order, rule or regulation adopted by said Commission shall be numbered and filed in its office in Austin, Texas;and a copy thereof shall be filed in the office of the Secretary of State, and the office of each County Clerk and each County Attorney in the county herein mentioned, and a mimeographed copy shall be furnished to each employee of said Commission.

Section 11. The particular regulatory powers herein granted to said Commission shall not be construed to limit other and general powers conferred upon it by law.

Section 12. The Game and Fish Commission is hereby expressly given the power and authority to review its own orders and to modify or revise the same as it shall find the facts to warrant. Any suit that may be filed to test the validity of any proclamation, order, rule or regulation of the Commission, passed pursuant to this Act, must be brought in the county where such order is to be effective, and not elsewhere. Such suit shall be advanced by trial and determined as quickly as possible. In all such trials the burden of proof shall be upon the party complaining of such order, proclamation, rule or regulation to show it is invalid.

Section 13. (a) Any person who shall violate any provision of this Act, or any person who shall violate any proclamation, order, rule, or regulation issued by the Game and Fish Commission under the provisions of this Act, shall be deemed guilty of a misdemeanor and upon conviction therefor shall be fined a sum not less than Ten Dollars ($10) nor more than Two Hundred Dollars ($200). Each game bird, game animal, fur-bearing animal, fresh water fish taken or possessed in violation of this act or of any proclamation, order, rule or regulation issued by said Game and Fish Commission shall constitute a separate offense.

(b) Any person convicted of violating this Act or any proclamation, order, rule, or regulation of the Game and Fish Commission under the provisions of this Act relating to fishing, hunting, or trapping in any manner, shall within the discretion of the Court or Jury trying the offense, forfeit such fishing, hunting

or trapping license, for such period of time as the Court or Jury might determine, but such period of forfeiture shall not extend beyond the remainder of the license year.

(c) No person who has had his license forfeited under this Act shall be entitled to purchase or receive from said Commission, or any of its authorized agents, a similar license for such period of forfeiture; and it shall be unlawful for such person to purchase or possess another such license for such period. Any person violating any of the provisions of this Section shall be deemed guilty of a misdemeanor and upon conviction shall be fined in a sum not less than Ten Dollars ($10) nor more than Two Hundred Dollars ($200).

Section 14. For the purpose of this Act, the wild life resources of said county are defined to be all the game birds and game animals, fur-bearing animals of all kinds, collared peccary, commonly called javelina, fresh water fish of all kinds.

Section 15. All laws and parts of laws, both general and special, prescribing an open season or period of time when it shall be lawful to take or kill any of the wild life resources of said county, together with all laws prescribing a closed season for such killing or taking, as well as all laws or parts of laws, general or special, providing for open waters or closed waters, and all laws and parts of laws, general and special, prescribing or limiting the method or means or manner in which any of the wild life resources of said county are taken, be and the same are hereby repealed. Any and all laws, general and special, in conflict with the provisions of this Act are likewise repealed to the extent of such conflict only.

Section 16. This Act shall become effective on January 1, 1960, and be in force and effect until January 1, 1963.

Section 17. It is hereby declared to be the legislative intent to enact each separate provision of this Act independent of all other provisions, and the fact that any section, word, clause, sentence, or part of this Act shall be declared unconstitutional shall in no event affect any other section, word, clause, sentence or part thereof; and it is hereby declared to be the intention of the Legislature to have passed each sentence, section, clause or part thereof; and it is hereby declared to be the intention of the Legislature to have passed each sentence, section, clause or part thereof irrespective of the fact that any other section, sentence, clause or part thereof may be declared invalid.

Section 18. The fact that the present law protecting the wild life resources in the said county of Comal will expire on January 1, 1960, leaving no law to adequately protect the wild life resources of Comal County from depletion and waste; and the further fact that the Calendars of both Houses of the Legislature are crowded, creates an emergency and an imperative public necessity authorizing the suspension of the Constitutional Rule requiring bills to be read on three several days in each House; and said Rule is hereby suspended; and this Act shall be in full force and effect from and after its passage, and it is so enacted.

FORM A

(For favorable and unfavorable reports on bills and resolutions, where no committee amendments are recommended.)

COMMITTEE ROOM

Date March 9, 1971,

Hon. Waggoner Carr

Speaker of the House of Representatives.

Sir:

We, your Committee on Game and Fisheries, to whom was referred H.B. No. 470, have had the same under consideration and beg to report back with recommendation that it { do / ~~do not~~ } pass, and be printed

Chairman, acting

(When this form is used for a favorable report on a general bill the words "do not" are marked out. If the bill is a local bill the word "not" should be inserted before the word "printed." When used for an unfavorable report the word "do" is marked out, the comma after "pass" is changed to a period, and the remaining words also marked out.

When this form is used for a simple or concurrent resolution the comma after "pass" should be a changed to a period and the remaining words stricken out because resolutions are printed in the Journal when first introduced.)

By: Bartram H. B. No. 470

A BILL TO BE ENTITLED

AN ACT

making it unlawful, except under the provisions of this Act, for any person to hunt, take, kill, or possess any game bird or game animal in Comal County at any time; to take, kill, or trap any fur-bearing animal in said County; to take or attempt to take any fresh-water fish in said County by any means or method; prescribing the legislative policies with respect to the wildlife resources of said County; conferring upon the Game and Fish Commission power and authority to regulate by provision, order, rule, or regulation the taking of wildlife resources of said County; requiring the Game and Fish Commission to make investigations with respect to depletion and waste of the wildlife resources of said County; requiring the Commission to provide an open season or period of time when it shall be lawful to take a portion of the wildlife resources of said County; defining depletion and waste; providing for the issuance of the antlerless permits; providing for a public hearing to be held in Comal County and for adequate notice of such hearing and for proper conducting of such hearing; providing for the adoption of the proclamations, orders, rules, or regulations of the Game and Fish Commission; providing for the effective period of regulations; providing for the publication of the regulations; providing that the powers of the Commission are not limited; providing venue for suit to test the validity of the proclamations, rules, regulations, or orders of the Commission; providing a penalty for the violation of any of the provisions of this Act as well as any order, rule, or regulation of the Commission; providing for the forfeiture of

licenses; making it unlawful to provide a new license and providing a penalty therefor; defining wildlife resources; repealing certain laws; providing for the effective date of this Act; providing a saving clause; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. This Act shall apply only to Comal County. It shall be unlawful, except as provided in this Act, for any person to hunt, take, kill, or possess, or attempt to hunt, take, or kill any game bird or game animal in said County at any time; or to take, kill, trap or possess, or attempt to take, kill or trap any fur-bearing animal in said County at any time; or to take or attempt to take any fresh-water fish by any means or method in said County at any time. In order to better conserve an ample supply of the wildlife resources in said County, to the end that the most reasonable and equitable privileges may be enjoyed by the people of this State and their posterity in their ownership and in the taking of such resources it is deemed for the public welfare that this Legislature should provide a law adaptable to changing conditions and emergencies which threaten depletion or waste of the wildlife resources in said County. The Game and Fish Commission is therefore granted the authority, power and duty to provide, by proclamation, rule, or regulation, from time to time, periods of time when it shall be lawful to take a portion of the wildlife resources of said County, when its investigation and findings of fact disclose there is an ample supply of such wildlife resources that a portion thereof may be taken which will not threaten depletion or waste of such supply. It shall also, by proclamation, rule or

regulation, from time to time, provide the means and the method and the place and the manner in which such wildlife resources may be lawfully taken; provided, however, that it shall be unlawful for any person to hunt, take, kill or possess, or attempt to hunt, take or kill any game bird or game animal in said County at any time; or to take, kill, trap or possess, or attempt to take, kill or trap any fur-bearing animal in said County at any time; or to take or attempt to take any fresh-water fish by any means or method in said County at any time; unless the owner of the land or the water, or his duly authorized agent, shall give consent thereto.

Sec. 2. It shall be the duty of the Game and Fish Commission to conduct, from time to time, or continuously, scientific research investigations and studies of the supply, economic value, environment, breeding habits, and so far as possible the sex ratio of the different species of game birds, game animals, fur-bearing animals, fresh-water fish, as well as the factors affecting their increase or decrease, particularly with reference to hunting, trapping, fishing, disease, infestation, predation, agricultural pressure, overpopulation, and any and all other factors that enter into a reduction or an increase in the supply of such wildlife resources of the County. Pursuant to and based upon such studies, said Commission shall enter its findings of fact with respect thereto, and if, in the opinion of the Commission, an open season or period of time may be safely provided for any of the wildlife resources of said County, said Commission is authorized and directed from time to time to provide an open season or period of time when such wildlife resources may be taken. The proclamation, rule, or

regulation issued by the Commission shall be specific as to the quantity, species, sex, age or size that may be taken. Such proclamation, rule or regulation shall provide the method or means that may be resorted to as well as the area, county or portion of the county where such wildlife resources shall be taken. In order to prevent depletion or waste of the wildlife resources of said County, the Game and Fish Commission shall have authority from time to time by proclamation, rule or regulation to conserve the wildlife resources of said County by an open season or period of time when it shall be lawful to take a portion of such wildlife resources of said County.

Sec. 3. When said Commission shall find from its investigations herein provided for, that danger of depletion, as defined in this Act, of any species of fresh-water fish, game bird, game animal or fur-bearing animal exists in any portion of the County, it shall be the duty of said Commission to revoke or modify or otherwise amend its order or orders so as to deter or prevent contribution to depletion of such species by the taking thereof. When said Commission shall find that danger of waste, as defined in this Act, of any of such species of fresh-water fish, game bird, game animal or fur-bearing animal, or sex thereof, exists in any portion of said County, it shall be the duty of said Commission to issue or amend or revoke or modify such of its rules and regulations as will afford to all of the people of this State the most equitable and reasonable privileges in the pursuit, taking or killing of such species or sex thereof in said area. Provided, further, that when said Commission shall find that danger of

depletion exists in any area by virtue of an Act of God, such as from flood, hurricane, fire or drouth, said Commission shall declare a state of emergency as to such species in said area, and its orders, rules and regulations issued under such state of emergency shall take effect and be in full force immediately upon issuance thereof.

Sec. 4. "Depletion" as used in this Act shall be construed to mean reduction of a species below immediate recuperative potentials by any deleterious cause or causes.

Sec. 5. "Waste" as used in this Act shall be construed to mean supply of a species or sex thereof sufficient that a seasonal harvest thereof will not prevent or, in the case of overpopulation, that will aid in the re-establishment of normal numbers of such species.

Sec. 6. The Game and Fish Commission's proclamation, rule or regulation permitting the hunting or taking of antlerless deer shall not be valid until the owner, or person in charge of the land upon which antlerless deer are to be taken, shall have agreed in writing to the removal by hunting of such antlerless deer from his tract under supervision and regulation of said Commission; and to the number of antlerless deer which may be removed therefrom. No person shall, in any event, hunt or kill any antlerless deer without first having procured an antlerless deer permit issued by the Game and Fish Commission. Such antlerless deer permit shall be issued in such form and under such rules as may be prescribed by the Game and Fish Commission.

Sec. 7. There shall be a public hearing held in Comal County before such proposed rule, regulation, or order is adopted in the

County. Notice of this public hearing must be given in a newspaper published in Comal County at least ten (10) days prior to the date of the hearing. If no newspaper is published in the County, notice of such hearing must be given in the newspaper published in an adjoining county and in the newspaper best known by the inhabitants of the County in which the rule, regulation, or order is to be in effect. The hearing may be conducted by an employee of the Game and Fish Commission upon order of the Commission or upon order of one (1) member of the Commission, it not being necessary for the Commission or some member of the Commission to be present.

Sec. 8. Orders, rules and regulations shall be adopted by a quorum of said Commission, and only at any regular or special Commission meeting or meetings, of the date and time of which each Commissioner shall have been notified in writing by the Executive Secretary of said Commission (or his assistant in his absence), and such meetings for such purpose shall be held only in said Commissioner's office at Austin, Texas. Any person interested shall be entitled to be heard at such meetings and to introduce evidence as to imminence of waste or depletion, as defined in this Act. Provided, that six (6) members, or the Chairman and five (5) members of said Commission shall constitute a quorum; and provided further, that no order, rule or regulation, general or local, shall be adopted at any regular or special meeting of the Commission unless and until a quorum is present.

Sec. 9. Orders, rules and regulations adopted by said Commission shall become effective fifteen (15) days after their adoption, except in case of emergency as provided in this Act, and

shall continue in full force and effect until they shall expire by their own terms, or are revoked or amended by said Commission.

Sec. 10. Immediately after its adoption a copy of each order, rule or regulation adopted by said Commission shall be numbered and filed in its office in Austin, Texas; and a copy thereof shall be filed in the office of the Secretary of State, and the office of each County Clerk and each County Attorney in the County herein mentioned, and a mimeographed copy shall be furnished to each employee of said Commission.

Sec. 11. The particular regulatory powers herein granted to said Commission shall not be construed to limit other and general powers conferred upon it by law.

Sec. 12. The Game and Fish Commission is hereby expressly given the power and authority to review its own orders and to modify or revise the same as it shall find the facts to warrant. Any suit that may be filed to test the validity of any proclamation, order, rule or regulation of the Commission, passed pursuant to this Act, must be brought in the county where such order is to be effective, and not elsewhere. Such suit shall be advanced by trial and determined as quickly as possible. In all such trials the burden of proof shall be upon the party complaining of such order, proclamation, rule or regulation to show it is invalid.

Sec. 13. (a) Any person who shall violate any provision of this Act, or any person who shall violate any proclamation, order, rule, or regulation issued by the Game and Fish Commission under the provisions of this Act, shall be deemed guilty of a misdemeanor and upon conviction therefor shall be fined a sum not less than

Ten Dollars ($10) nor more than Two Hundred Dollars ($200). Each game bird, game animal, fur-bearing animal, fresh water fish taken or possessed in violation of this Act or of any proclamation, order, rule or regulation issued by said Game and Fish Commission shall constitute a separate offense.

(b) Any person convicted of violating this Act or any proclamation, order, rule, or regulation of the Game and Fish Commission under the provisions of this Act relating to fishing, hunting, or trapping in any manner, shall within the discretion of the Court or Jury trying the offense, forfeit such fishing, hunting, or trapping license, for such period of time as the Court or Jury might determine, but such period of forfeiture shall not extend beyond the remainder of the license year.

(c) No person who has had his license forfeited under this Act shall be entitled to purchase or receive from said Commission, or any of its authorized agents, a similar license for such period of forfeiture; and it shall be unlawful for such person to purchase or possess another such license for such period. Any person violating any of the provisions of this Section shall be deemed guilty of a misdemeanor and upon conviction shall be fined in a sum not less than Ten Dollars ($10) nor more than Two Hundred Dollars ($200).

Sec. 14. For the purpose of this Act, the wildlife resources of said County are defined to be all the game birds and game animals, fur-bearing animals of all kinds, collared peccary, commonly called javelina, fresh-water fish of all kinds.

Sec. 15. All laws and parts of laws, both general and special, prescribing an open season or period of time when it shall be lawful to take or kill any of the wildlife resources of said County, together with all laws prescribing a closed season for such killing or taking, as well as all laws or parts of laws, general or special, providing for open waters or closed waters, and all laws and parts of laws, general and special, prescribing or limiting the method or means or manner in which any of the wildlife resources of said County are taken, be and the same are hereby repealed. Any and all laws, general and special, in conflict with the provisions of this Act are likewise repealed to the extent of such conflict only.

Sec. 16. This Act shall become effective on January 1, 1960, and be in force and effect until January 1, 1963.

Sec. 17. It is hereby declared to be the legislative intent to enact each separate provision of this Act independent of all other provisions, and the fact that any section, word, clause, sentence, or part of this Act shall be declared unconstitutional shall in no event affect any other section, word, clause, sentence or part thereof; and it is hereby declared to be the intention of the Legislature to have passed each sentence, section, clause or part thereof; and it is hereby declared to be the intention of the Legislature to have passed each sentence, section, clause or part thereof irrespective of the fact that any other section, sentence, clause or part thereof may be declared invalid.

Sec. 18. The fact that the present law protecting the wildlife resources in the said County of Comal will expire on January 1, 1960, leaving no law to adequately protect the wildlife resources

of Comal County from depletion and waste; and the further fact that the Calendars of both Houses of the Legislature are crowded, creates an emergency and an imperative public necessity authorizing the suspension of the Constitutional Rule requiring bills to be read on three several days in each House; and said Rule is hereby suspended; and this Act shall be in full force and effect from and after its passage, and it is so enacted.

Austin, Texas

April 16 19 59

Hon. Ben Ramsey

President of the Senate

Sir:

We, your Committee on GAME AND FISH, to whom was referred H. B. No. 470, have had the same under consideration, and we are instructed to report it back to the Senate with the recommendation that it do _____ pass as amended and be _____ printed.

Chairman

COMMITTEE AMENDMENT NO. 1 to H. B. NO. 470.

Amend Section 16 of H. B. No. 470 so that the same shall hereafter read as follows:

"Sec. 16. This Act shall become effective on January 1, 1960, and be in force and effect until January 1, 1962."

#1

ADOPTED

APR 20 1959

Schnabel

SECRETARY OF SENATE

APR 27 1959

The House has concurred in Senate amendments to House Bill No. 470 by vote of ____ ~~ayes~~, ____ ~~noes~~.

BH

m.m.

Amend caption to conform to body of bill.

ADOPTED

APR 20 1959

SECRETARY OF SENATE

APR 27 1959

The House has concurred in Senate amendments to House Bill No. 470 by vote of _____ ayes, _____ noes.

ENROLLED

H. B. No. 470

AN ACT

making it unlawful, except under the provisions of this Act, for any person to hunt, take, kill, or possess any game bird or game animal in Comal County at any time; to take, kill, or trap any fur-bearing animal in said County; to take or attempt to take any fresh-water fish in said County by any means or method; prescribing the legislative policies with respect to the wildlife resources of said County; conferring upon the Game and Fish Commission power and authority to regulate by provision, order, rule, or regulation the taking of wildlife resources of said County; requiring the Game and Fish Commission to make investigations with respect to depletion and waste of the wildlife resources of said County; requiring the Commission to provide an open season or period of time when it shall be lawful to take a portion of the wildlife resources of said County; defining depletion and waste; providing for the issuance of the antlerless permits; providing for a public hearing to be held in Comal County and for adequate notice of such hearing and for proper conducting of such hearing; providing for the adoption of the proclamations, orders, rules, or regulations of the Game and Fish Commission; providing for the effective period of regulations; providing for the publication of the regulations; providing that the powers of the Commission are not limited; providing venue for suit to test the validity of the proclamations, rules, regulations, or orders of the Commission; providing a penalty for the violation of any of the provisions of this Act as well as any order, rule, or regulation of the Commission; providing for the forfeiture of

licenses; making it unlawful to provide a new license and providing a penalty therefor; defining wildlife resources; repealing certain laws; providing for the effective date of this Act; providing a saving clause; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. This Act shall apply only to Comal County. It shall be unlawful, except as provided in this Act, for any person to hunt, take, kill, or possess, or attempt to hunt, take, or kill any game bird or game animal in said County at any time; or to take, kill, trap or possess, or attempt to take, kill or trap any fur-bearing animal in said County at any time; or to take or attempt to take any fresh-water fish by any means or method in said County at any time. In order to better conserve an ample supply of the wildlife resources in said County, to the end that the most reasonable and equitable privileges may be enjoyed by the people of this State and their posterity in their ownership and in the taking of such resources it is deemed for the public welfare that this Legislature should provide a law adaptable to changing conditions and emergencies which threaten depletion or waste of the wildlife resources in said County. The Game and Fish Commission is therefore granted the authority, power and duty to provide, by proclamation, rule, or regulation, from time to time, periods of time when it shall be lawful to take a portion of the wildlife resources of said County, when its investigation and findings of fact disclose there is an ample supply of such wildlife resources that a portion thereof may be taken which will not threaten depletion or waste of such supply. It shall also, by proclamation, rule or

regulation, from time to time, provide the means and the method and the place and the manner in which such wildlife resources may be lawfully taken; provided, however, that it shall be unlawful for any person to hunt, take, kill or possess, or attempt to hunt, take or kill any game bird or game animal in said County at any time; or to take, kill, trap or possess, or attempt to take, kill or trap any fur-bearing animal in said County at any time; or to take or attempt to take any fresh-water fish by any means or method in said County at any time; unless the owner of the land or the water, or his duly authorized agent, shall give consent thereto.

Sec. 2. It shall be the duty of the Game and Fish Commission to conduct, from time to time, or continuously, scientific research investigations and studies of the supply, economic value, environment, breeding habits, and so far as possible the sex ratio of the different species of game birds, game animals, fur-bearing animals, fresh-water fish, as well as the factors affecting their increase or decrease, particularly with reference to hunting, trapping, fishing, disease, infestation, predation, agricultural pressure, overpopulation, and any and all other factors that enter into a reduction or an increase in the supply of such wildlife resources of the County. Pursuant to and based upon such studies, said Commission shall enter its findings of fact with respect thereto, and if, in the opinion of the Commission, an open season or period of time may be safely provided for any of the wildlife resources of said County, said Commission is authorized and directed from time to time to provide an open season or period of time when such wildlife resources may be taken. The proclamation, rule, or

regulation issued by the Commission shall be specific as to the quantity, species, sex, age or size that may be taken. Such proclamation, rule or regulation shall provide the method or means that may be resorted to as well as the area, county or portion of the county where such wildlife resources shall be taken. In order to prevent depletion or waste of the wildlife resources of said County, the Game and Fish Commission shall have authority from time to time by proclamation, rule or regulation to conserve the wildlife resources of said County by an open season or period of time when it shall be lawful to take a portion of such wildlife resources of said County.

Sec. 3. When said Commission shall find from its investigations herein provided for, that danger of depletion, as defined in this Act, of any species of fresh-water fish, game bird, game animal or fur-bearing animal exists in any portion of the County, it shall be the duty of said Commission to revoke or modify or otherwise amend its order or orders so as to deter or prevent contribution to depletion of such species by the taking thereof. When said Commission shall find that danger of waste, as defined in this Act, of any of such species of fresh-water fish, game bird, game animal or fur-bearing animal, or sex thereof, exists in any portion of said County, it shall be the duty of said Commission to issue or amend or revoke or modify such of its rules and regulations as will afford to all of the people of this State the most equitable and reasonable privileges in the pursuit, taking or killing of such species or sex thereof in said area. Provided, further, that when said Commission shall find that danger of

depletion exists in any area by virtue of an Act of God, such as from flood, hurricane, fire or drouth, said Commission shall declare a state of emergency as to such species in said area, and its orders, rules and regulations issued under such state of emergency shall take effect and be in full force immediately upon issuance thereof.

Sec. 4. "Depletion" as used in this Act shall be construed to mean reduction of a species below immediate recuperative potentials by any deleterious cause or causes.

Sec. 5. "Waste" as used in this Act shall be construed to mean supply of a species or sex thereof sufficient that a seasonal harvest thereof will not prevent or, in the case of overpopulation, that will aid in the re-establishment of normal numbers of such species.

Sec. 6. The Game and Fish Commission's proclamation, rule or regulation permitting the hunting or taking of antlerless deer shall not be valid until the owner, or person in charge of the land upon which antlerless deer are to be taken, shall have agreed in writing to the removal by hunting of such antlerless deer from his tract under supervision and regulation of said Commission; and to the number of antlerless deer which may be removed therefrom. No person shall, in any event, hunt or kill any antlerless deer without first having procured an antlerless deer permit issued by the Game and Fish Commission. Such antlerless deer permit shall be issued in such form and under such rules as may be prescribed by the Game and Fish Commission.

Sec. 7. There shall be a public hearing held in Comal County before such proposed rule, regulation, or order is adopted in the

County. Notice of this public hearing must be given in a newspaper published in Comal County at least ten (10) days prior to the date of the hearing. If no newspaper is published in the County, notice of such hearing must be given in the newspaper published in an adjoining county and in the newspaper best known by the inhabitants of the County in which the rule, regulation, or order is to be in effect. The hearing may be conducted by an employee of the Game and Fish Commission upon order of the Commission or upon order of one (1) member of the Commission, it not being necessary for the Commission or some member of the Commission to be present.

Sec. 8. Orders, rules and regulations shall be adopted by a quorum of said Commission, and only at any regular or special Commission meeting or meetings, of the date and time of which each Commissioner shall have been notified in writing by the Executive Secretary of said Commission (or his assistant in his absence), and such meetings for such purpose shall be held only in said Commissioner's office at Austin, Texas. Any person interested shall be entitled to be heard at such meetings and to introduce evidence as to imminence of waste or depletion, as defined in this Act. Provided, that six (6) members, or the Chairman and five (5) members of said Commission shall constitute a quorum; and provided further, that no order, rule or regulation, general or local, shall be adopted at any regular or special meeting of the Commission unless and until a quorum is present.

Sec. 9. Orders, rules and regulations adopted by said Commission shall become effective fifteen (15) days after their adoption, except in case of emergency as provided in this Act, and

shall continue in full force and effect until they shall expire by their own terms, or are revoked or amended by said Commission.

Sec. 10. Immediately after its adoption a copy of each order, rule or regulation adopted by said Commission shall be numbered and filed in its office in Austin, Texas; and a copy thereof shall be filed in the office of the Secretary of State, and the office of each County Clerk and each County Attorney in the County herein mentioned, and a mimeographed copy shall be furnished to each employee of said Commission.

Sec. 11. The particular regulatory powers herein granted to said Commission shall not be construed to limit other and general powers conferred upon it by law.

Sec. 12. The Game and Fish Commission is hereby expressly given the power and authority to review its own orders and to modify or revise the same as it shall find the facts to warrant. Any suit that may be filed to test the validity of any proclamation, order, rule or regulation of the Commission, passed pursuant to this Act, must be brought in the county where such order is to be effective, and not elsewhere. Such suit shall be advanced by trial and determined as quickly as possible. In all such trials the burden of proof shall be upon the party complaining of such order, proclamation, rule or regulation to show it is invalid.

Sec. 13. (a) Any person who shall violate any provision of this Act, or any person who shall violate any proclamation, order, rule, or regulation issued by the Game and Fish Commission under the provisions of this Act, shall be deemed guilty of a misdemeanor and upon conviction therefor shall be fined a sum not less than

Ten Dollars ($10) nor more than Two Hundred Dollars ($200). Each game bird, game animal, fur-bearing animal, fresh water fish taken or possessed in violation of this Act or of any proclamation, order, rule or regulation issued by said Game and Fish Commission shall constitute a separate offense.

(b) Any person convicted of violating this Act or any proclamation, order, rule, or regulation of the Game and Fish Commission under the provisions of this Act relating to fishing, hunting, or trapping in any manner, shall within the discretion of the Court or Jury trying the offense, forfeit such fishing, hunting, or trapping license, for such period of time as the Court or Jury might determine, but such period of forfeiture shall not extend beyond the remainder of the license year.

(c) No person who has had his license forfeited under this Act shall be entitled to purchase or receive from said Commission, or any of its authorized agents, a similar license for such period of forfeiture; and it shall be unlawful for such person to purchase or possess another such license for such period. Any person violating any of the provisions of this Section shall be deemed guilty of a misdemeanor and upon conviction shall be fined in a sum not less than Ten Dollars ($10) nor more than Two Hundred Dollars ($200).

Sec. 14. For the purpose of this Act, the wildlife resources of said County are defined to be all the game birds and game animals, fur-bearing animals of all kinds, collared peccary, commonly called javelina, fresh-water fish of all kinds.

Sec. 15. All laws and parts of laws, both general and special, prescribing an open season or period of time when it shall be lawful to take or kill any of the wildlife resources of said County, together with all laws prescribing a closed season for such killing or taking, as well as all laws or parts of laws, general or special, providing for open waters or closed waters, and all laws and parts of laws, general and special, prescribing or limiting the method or means or manner in which any of the wildlife resources of said County are taken, be and the same are hereby repealed. Any and all laws, general and special, in conflict with the provisions of this Act are likewise repealed to the extent of such conflict only.

Sec. 16. This Act shall become effective on January 1, 1960, and be in force and effect until January 1, 1962.

Sec. 17. It is hereby declared to be the legislative intent to enact each separate provision of this Act independent of all other provisions, and the fact that any section, word, clause, sentence, or part of this Act shall be declared unconstitutional shall in no event affect any other section, word, clause, sentence or part thereof; and it is hereby declared to be the intention of the Legislature to have passed each sentence, section, clause or part thereof; and it is hereby declared to be the intention of the Legislature to have passed each sentence, section, clause or part thereof irrespective of the fact that any other section, sentence, clause or part thereof may be declared invalid.

Sec. 18. The fact that the present law protecting the wildlife resources in the said County of Comal will expire on January 1, 1960, leaving no law to adequately protect the wildlife resources

of Comal County from depletion and waste; and the further fact that the Calendars of both Houses of the Legislature are crowded, creates an emergency and an imperative public necessity authorizing the suspension of the Constitutional Rule requiring bills to be read on three several days in each House; and said Rule is hereby suspended; and this Act shall be in full force and effect from and after its passage, and it is so enacted.

President of the Senate

Speaker of the House

I hereby certify that H. B. No. 470 was passed by the House on March 19, 1959, by the following vote: Yeas 137, Nays 0; and that the House concurred in Senate amendments to H. B. No. 470, on April 27, 1959, by a viva-voce vote.

Chief Clerk of the House

I hereby certify that H. B. No. 470 was passed by the Senate, as amended, on April 20, 1959, by the following vote: Yeas 28, Nays 2.

Secretary of the Senate

APPROVED: 5-8-59
Date

11:30

Governor

Zollie Steakley

H. B. 470

By: Bartram

A BILL

TO BE ENTITLED

AN ACT making it unlawful, except under the provisions of this Act, for any person to hunt, take, kill, or possess any game bird or game animal in Comal County at any time; to take, kill, or trap any fur-bearing animal in said county; to take or attempt to take any fresh water fish in said county by any means or method; prescribing the legislative policies with respect to the wild life resources of said county; conferring upon the Game and Fish Commission power and authority to regulate by provision, order, rule, or regulation the taking of wild life resources of said county; requiring the Game and Fish Commission to make investigations with respect to depletion and waste of the wild life resources of said county; requiring the Commission to provide an open season or period of time when it shall be lawful to take a portion of the wild life resources of said county; defining depletion and waste; providing for the issuance of the antlerless permits; providing for a public hearing to be held in Comal County and for adequate notice of such hearing and for proper conducting of such hearing; providing for the adoption of the proclamations, orders, rules or regulations of the Game and Fish Commission; providing for the effective period of regulations; providing for the publication of the regulations; providing that the powers of the Commission are not limited; providing venue for suit to test the validity of the proclamations, rules, regulations, or orders of the Commission; providing a penalty for the violation of any of the provisions of this Act as well as any order, rule, or regulation of the Commission; providing for the forfeiture of licenses; making it unlawful to provide a new license and providing a penalty therefor; defining wild life resources; repealing certain laws; providing for the effective date of this Act; providing a saving clause; and declaring an emergency.

FILED FEB 18 1959

FEB 23 1959 READ 1ST TIME AND REFERRED TO COMMITTEE ON Game - Fish

RECEIVED MAR 9 1959 HOUSE OF REPRESENTATIVES

DELIVERED MAR 9 1959 HOUSE OF REPRESENTATIVES

MAR 9 1959 REPORTED FAVORABLY SENT TO PRINTER.

MAR 10 1959 RETURNED FROM PRINTER. SENT TO SPEAKER

MAR 19 1959 READ SECOND TIME _____ AND ORDERED _____ ENGROSSED by Viva Voce Vote

Dorothy Hallman
Chief Clerk, House of Representatives

MAR 19 1959 SENT TO ENGROSSING CLERK

MAR 19 1959 Constitutional Rule requiring bills to be read on three several days suspended by a four-fifths vote.
Yeas 141 Nays 1

Dorothy Hallman
Chief Clerk, House of Representatives

MAR 19 1959 Read third time _____ and Passed by following vote yeas 137
Nays 0

Dorothy Hallman
Chief Clerk
HOUSE OF REPRESENTATIVES

MAR 19 1959 MOTION TO RECONSIDER THE VOTE BY WHICH H. B. 47 ~~ADOPTED~~ PASSED AND TO TABLE THE MOTION TO RECONSIDER PREVAILED ~~PASSED~~ BY A Viva Voce VOTE OF _____ AYES AND _____ NAYES

Dorothy Hallman
CHIEF CLERK HOUSE OF REPRESENTATIVES

ENROLLED 4-27-59 Gen. Clerk

Game & Fish.

By: Bartram

H. B. No. 470

A BILL TO BE ENTITLED

AN ACT

making it unlawful, except under the provisions of this Act, for any person to hunt, take, kill, or possess any game bird or game animal in Comal County at any time; to take, kill, or trap any fur-bearing animal in said County; to take or attempt to take any fresh-water fish in said County by any means or method; prescribing the legislative policies with respect to the wildlife resources of said County; conferring upon the Game and Fish Commission power and authority to regulate by provision, order, rule, or regulation the taking of wildlife resources of said County; . . . etc.; and declaring an emergency.

2-18-59 Filed.

2-23-59 Read first time and referred to Committee on Game and Fisheries.

3- 9-59 Reported favorably, sent to printer.

3-10-59 Returned from printer, sent to Speaker.

3-19-59 Read second time and ordered engrossed by a viva-voce vote.

3-19-59 Constitutional Rule requiring bills to be read on three several days suspended by a four-fifths vote: Yeas 141, Nays 1.

3-19-59 Read third time and passed ~~by the following vote:~~ Yeas 137, Nays 0.

3-19-59 Motion to reconsider the vote by which H. B. No. 470 was passed and to table the motion to reconsider prevailed by a viva-voce vote.

Dorothy Hallman
Chief Clerk, H. of R.

3-19-59 Sent to Engrossing Clerk.

3-19-59 Engrossed.

Orea Griffin
Engrossing Clerk, H. of R.

DELIVERED APR 21 1959 HOUSE OF REPRESENTATIVES

MAR 23 1959 RETURNED FROM ENGROSSING CLERK

MAR 23 1959 SENT TO SENATE

RECEIVED APR 21 1959 HOUSE OF REPRESENTATIVES

MAR 23 1959
IN THE SENATE
Received from the House.

MAR 23 1959
Read first time and referred to Committee on Game and Fish

APR 16 1959
Reported Favorably.
as amended

APR 20 1959

Regular order of business suspended by unanimous consent to permit consideration.

APR 20 1959

READ SECOND TIME, amended

AND PASSED TO THIRD READING.

APR 20 1959

Amend caption to conform to body of bill.

APR 20 1959

Senate Rule 32 and Constitutional Rule (Sec. 32, Art. III) suspended by a vote of 29 yeas, 1 nays, to place bill on third reading and final passage.

APR 20 1959

READ THIRD TIME AND PASSED BY THE FOLLOWING VOTE:

Yeas 28 Nays 2

Charles Schnabel

Secretary of the Senate

APR 21 1959 SENT TO HOUSE

APR 21 1959

RETURNED FROM SENATE AS AMENDED

Dorothy Hallman

Chief Clerk, House of Representatives

APR 21 1959 SENT TO PRINTER.

RETURNED FROM PRINTER. SENT TO SPEAKER

APR 21 1959

APR 27 1959

The House has concurred in Senate amendments to House Bill No. 470 by viva voce vote of ____ ayes, ____ nees.

Dorothy Hallman

Chief Clerk, House of Representatives

APR 27 1959 SENT TO ENROLLING CLERK