

SUBJECT: Revising the Parks and Wildlife Code

COMMITTEE: State Recreational Resources — committee substitute recommended

VOTE: 5 ayes — Kuempel, Hightower, Horn, Merritt, Palmer
0 nays
4 absent — McCall, Hilderbran, King, Longoria

WITNESSES: For — Dick Ingram, Coastal Conservation Association; Steve Oleson, Texas Hawking Association

Against — Malcolm Freeman, Lone Star Bowhunters; Ellis Gilleland, Texas Animals; Ronald Hornbeck, Hornbeck Seafood; Terry Ricks, Texas Seafood Products; Wesley Blevins; Richard Moore; Dennis Wiltnebert

On — Andrew Sansom and David Sinclair, Texas Parks and Wildlife Department; Scott Royder, Sierra Club

DIGEST: CSHB 2542 would make extensive changes to the Parks and Wildlife Code, eliminating some statutory requirements that the department found to be overly burdensome, changing maximum fines for Parks and Wildlife Code penalties, giving the TPWD additional rulemaking authority, and adding a number of statutory provisions to revise and codify current regulatory procedures.

CSHB 2542 would make changes to almost every section of the code, including those governing hunting, fishing, commercial fishing, shrimping, bait dealers, nongame and fur-bearing animals, pen-raised game birds, raptors, falconry, alligators, migratory birds, cold storage and game processing facilities, game breeders, archery, endangered species, boats, wildlife management areas, TPWD proclamations, funding, fees and penalties.

CSHB 2542 would grant TPWD additional rulemaking authority in the following areas: managing nuisance alligators and regulating alligator eggs; requiring dam owners to construct fish ladders to allow passage around

dams or other obstructions; establishing special hunting and fishing seasons for individuals under 17; allowing TPWD to set fees for special drawings for outdoor events; adopting rules concerning fishing guide licenses; and permitting the department to allow underwater explosives for construction purposes.

The bill would take effect September 1, 1997, and would apply only to an offense or penalty committed on or after its effective date. A rule adopted before enactment of the bill would not be invalid if the bill repealed a section of the code in conflict with that rule.

General provisions

The bill would delete a statutory provision requiring TPWD to refund reservation fees cancelled 72 hours prior to the day the site was to be occupied and would remove the prohibition against charging users a fee in advance.

The commission could establish special open seasons for hunting and special conditions for fishing for persons aged 17 years old and younger.

Employees of TPWD would be required to expand the wise use and conservation of fish and wildlife resources and increase participation in outdoor activities through education and outreach. These activities could be funded from any of the department's special accounts.

The bill would re-define "waste" under the Uniform Wildlife Regulatory Act as the failure to provide for the regulated harvest of surplus wildlife resources when that harvest would optimize a healthy and self-sustaining population of species. Wildlife resources would be defined to include all wild animals and birds and aquatic animal life.

The bill would prohibit the taking or killing of an endangered species.

The use of explosives in water for construction purposes would have to be authorized by TPWD rather than by a county judge.

Contraceptives could not be applied to vertebrate wildlife without written permission from the department.

Public notice and hearings

The bill would remove a requirement that the Texas Parks and Wildlife Commission hold public hearings in at least five locations before making a proclamation under the Uniform Wildlife Regulatory Act, which regulates game species.

It also would remove certain statutory requirements requiring (1) public hearings for all proposed regulations concerning nongame species and (2) notice of a hearing be posted in three major newspapers at least a week prior to the hearing.

Boats

The bill would also broaden the definition of “boat” in the Water Safety Act by removing a statutory provision stipulating that boats be manufactured and used primarily for noncommercial use.

Boats on docks, moors, or stored on water in Texas would be required to have a current registration number, a change from current law that requires only boats being operated or moving to be registered.

Funding and fees

The bill would repeal a statutory provision establishing that the cost of a conservation permit could not exceed the cost of a combination hunting and fishing license.

TPWD would be allowed to conduct public drawings to select applicants for public fishing events or other special events and could approve participation fees, capped at \$25 per species or event. Profits from such an event would have to be used for management and restoration of the fishery or resource holding the event.

Penalty changes

Maximum fines would be increased for certain Parks and Wildlife offenses to match maximum fines under Penal Code offenses. The maximum fine imposed for a felony violation would increase from \$5,000 to \$10,000; for a Parks and Wildlife Class A misdemeanor from \$2,000 to \$4,000; and for a Parks and Wildlife Class B misdemeanor from \$1,000 to \$2,000.

The offense of illegally exporting an animal from the state would be compounded for each animal so exported. The penalty for hunting or fishing with a suspended or revoked license would change from a Class C to a Class A misdemeanor, punishable by jail time up to one year or a fine of \$500 to \$4,000 or both. It would be a Class C Parks and Wildlife misdemeanor, punishable by a fine of \$25 to \$500, for fish farmers to take wild brood stock.

The bill also would establish that violations of TPWD rules concerning shrimping would be punishable by the same penalties established for violations of the shrimping statutes.

Hunting

Hunting or catching wildlife resources by any means or method on private land without the owner's consent would be prohibited, as would be the taking of any aquatic animal life without the consent of the landowner or landowner's agent.

CSHB 2542 would clarify current statutory requirements and codify regulations concerning tagging, identifying and possessing deer and deer parts; allow for the sale of inedible parts of various wild animals, including deer antlers, hides, bones and sinews; amend the state game breeder statutes to prohibit the sale, transfer, shipment or trade of game animals during open season only in the county where the animals are sold or traded; and eliminate a current statutory prohibition against hunting on Lower Colorado River Authority lands.

The bill would clarify the statutes concerning hunting with a light by specifying that hunting *game* animals with an artificial light, including headlights, would be prohibited.

The bill would provide for regulating the transport for commercial purposes of pelts or carcasses of fur-bearing animals, specify under what conditions a live fur-bearing animal could be captured or possessed, and allow fur-bearing animals to be taken by a licensed hunter, so long as the animal was not taken for commercial purposes.

For bow hunting, the definition of archery equipment would be expanded to include recurved or compound bows, and a separate category for crossbows would be established. Disabled persons who had lost upper limb could use crossbows to take deer, turkey and javelina during open archery season.

Birds and reptiles

The bill would make a number of changes to the statutes concerning falconry and raptors, allowing the sale of captive-bred raptors and simplifying requirements concerning hunting with raptors by nonresidents

It would also amend statutes on migratory and nongame birds, providing that a state permit would not be required if a federal permit has already been issued to kill migratory birds under the Federal Migratory Birds Act. The TPWD commission could delegate to the executive director authority to provide for open season on migratory game birds. Certain birds would be eliminated from the list of nongame birds that could be killed by statute, eliminating inconsistencies with federal law. The bill would also specify that a permit would not be required to kill certain birds, including yellow-headed blackbirds or magpies, that were harming crops and wildlife or had become a health hazard or other nuisance.

In the area of captive game birds, the bill would clarify that a person who holds birds in captivity for sale must have a game bird breeder's license, deleting a current statutory provision exempting from license requirements persons with fewer than 12 captive game birds for personal use.

No one could release banded pen-reared birds without a private bird hunting area license. Individuals hunting banded pen-reared birds would have to hold a hunting lease license. The band would have to remain on the bird until it was taken to the hunter's home, the home of another person receiving the bird, or a cold storage and processing facility.

The bill would make a number of changes to the regulations concerning alligators, giving the commission regulatory authority to control nuisance alligators and regulate the taking of alligator eggs.

Commercial fishing licenses

A bait shrimp dealers license could not be held by a person holding a wholesale fish dealer's license; licensed bait dealers could bring aquatic products into the state without a wholesale or retail fish dealer's license.

The commission could adopt rules governing the issuance of fishing guide licenses.

Wildlife management areas

The bill would delete specific references to two national forests and clarify that TPWD has the authority to enter into wildlife management agreements with federal agencies.

The executive director, rather than the department, could prohibit hunting and fishing in wildlife management areas and public hunting lands. Permits for hunting could be issued in wildlife management areas and the department could accept multiple applications for special hunting permits, programs, packages or events in those areas.

**SUPPORTERS
SAY:**

CSHB 2542 would streamline the Texas Parks and Wildlife Code, making it easier for game wardens and others to enforce the law and the general public to understand it. The bill would also codify some TPWD regulations and repeal statutory provisions that have resulted in unnecessary and burdensome regulations or that have been superseded by regulatory authority.

When the department reviewed the Parks and Wildlife Code in 1996, it found many statutes that were unnecessary, archaic, over complicated, or duplicative. The reviewers identified hundreds of statutes they felt would be good candidates for amendment or repeal. CSHB 2542 incorporates many of the changes suggested by reviewers, including the repeal of local and special laws listed by county in Title 7 of the Code that have been superseded by other Parks and Wildlife regulations and statutes.

Public notice and hearings

Public notice and hearings requirements are a good example of the need for updating the code. It is very costly and time consuming for the TPWD to hold public hearings in at least five locations before making a proclamation under the Uniform Wildlife Regulatory Act. The department has interpreted this requirement to mean five different counties. The intent of the act would be better served by holding hearings in the counties affected by a proclamation.

Requiring public hearings for all proposed regulations concerning nongame species and notice of those hearings in three major newspapers is also costly and unnecessary. The department holds multiple hearings on any regulation that is controversial, but there are many regulations that make very small changes and do not warrant a hearing. Publishing notice of hearings in three major newspapers is expensive and wasteful because almost no one reads the small notices at the back of the newspaper anyway. The department fully complies with notice and hearing requirements under the Administrative Procedures Act.

General provisions

CSHB 2542 would redefine waste in the bill as a way of directing the department to prevent game animals from overpopulating their habitats. This redefinition would not affect nongame species like cardinals because waste is mentioned in the code only in reference to game species.

Deleting a current statutory provision requiring TPWD to refund reservation fees cancelled 72 hours prior to the day the site is to be occupied would reduce the problem of people tying up facilities for months with no

intention of fully utilizing them. These people prevent others from enjoying the state park system.

Boats

As long as they are on state waters, docked, moored, or stored boats in Texas should be registered. It is difficult to enforce boat registration requirements under current law; boat owners claim their boats never move to avoid registration costs. Boats, like cars, should be registered at all times unless they are dry-docked or on dry land.

Broadening the definition of boat would eliminate a sales tax exemption currently enjoyed by commercial fishermen who operate boats less than 65 feet long. These fisherman should pay sales taxes on their boats, just like recreational boaters. The bill would merely do away with an outdated and inequitable tax exemption.

Hunting

By including yellow headed blackbirds and magpies on the list of nongame birds that can be killed without a permit, CSHB 2542 would track federal language concerning nongame bird species.

OPPONENTS
SAY:

CSHB 2542 may be overzealous in its attempts to reshape the Parks and Wildlife Code.

Public notice and hearings

The Texas Parks and Wildlife Commission should continue to hold public hearings in at least five locations when adopting proclamations concerning game species, fishing and hunting. It is important that the information concerning TPWD regulations be as widely dispersed as possible, especially in rural areas. Everyone in the region needs to be aware of new rules.

All proposed regulations concerning nongame species should be announced in a public hearing, and notices of hearings should still be posted in three major newspapers a week before the hearing. Notices in the paper may be

little read, but notices in the *Texas Register* (required under the Administrative Procedures Act) pass completely unnoticed.

General provisions

The bill would redefine waste under the Uniform Wildlife Regulatory Act to mean the failure to provide for the regulated harvest of surplus wildlife resources when that harvest would optimize a healthy and self-sustaining population of species. Wildlife resources, according to the bill, would include all wild animals, birds and aquatic animal life, which could lead to nongame species like cardinals being killed if they were identified as “surplus wildlife.”

The TPWD should have to refund reservation fees cancelled 72 hours prior to the day the site is to be occupied, to encourage all Texans, especially those who cannot afford to lose a reservation fee, to visit the state park system.

Boats

Boats that are docked, moored or stored should not have to be registered. Car owners, with a car up on blocks in their garage, for example, are not required to have to keep their vehicle registered as long as they do not drive it. The same should apply to boat owners. A wet boat slip is the same as a garage.

It is not fair to make owners of small commercial fishing boats pay sales taxes on their vessels. Small commercial fishermen often struggle to make a living and may not be able to afford to pay sales taxes on boats they need to eke out a living.

Hunting

Yellow headed blackbirds, a delight of bird watchers, should not be included on the list of nongame birds that can be killed without a permit. Magpies are not a nuisance in Texas and also should be kept off the list.

OTHER
OPPONENTS
SAY:

CSHB 2542 should replace an original provision of the bill prohibiting a bait-shrimp dealer's license from being issued to a place of business for which a wholesale fish dealer's license already has been issued. This would make it harder for shrimp caught under a bait-dealer's license to be fraudulently sold as shrimp caught for food under a bay shrimp license.

NOTES:

The committee substitute added a number of provisions, including establishing crossbows as a separate category from archery equipment, regulating alligator collection, and prohibiting the killing or taking of endangered species.

The committee substitute deleted original provisions providing that crossbows were archery equipment, prohibiting possession of parts of antelope or deer carcasses in certain circumstances, concerning public requests for regulations in certain locations, amending the definition of fishing guide, and providing that a bait-shrimp dealer's license could not be issued to the place of business for which a wholesale fish dealer's license had been issued.

The companion bill, SB 1322 by Brown, is pending in the Senate Natural Resources Committee.