

SUBJECT: Oyster regulation and promotion

COMMITTEE: Public Health — committee substitute recommended

VOTE: 6 ayes — Gray, Coleman, Capelo, Glaze, Hilderbran, Uresti

0 nays

3 absent — Delisi, Maxey, McClendon

WITNESSES: For — None

Against — Reggie James, Consumers Union, Southwest Regional Office

BACKGROUND: In 1998, the oyster industry in Galveston Bay shut down operations for five months because of a food-borne illness in raw oysters that made 367 people ill, according to the Texas Department of Health (TDH). Although the closure was voluntary, the industry allowed TDH to make the decision on reopening the oyster harvest area. TDH reopened Galveston Bay for harvesting when the water temperature fell below 70 degrees. Summer oyster harvesters lost millions of dollars during the months of closure.

DIGEST: CSHB 1971 would amend the Health and Safety Code to add regulations on refrigeration of oysters and on the use and administration of the \$1-per-barrel fee on oyster sales. It would require TDH to conduct sanitary surveys and sampling of bay water and shellfish meat and would set stringent standards for shellfish sanitation. The bill would create an advisory council for that program. It also would establish a program to promote and advertise the Texas oyster industry, to be administered by the Texas Department of Agriculture (TDA) in consultation with an advisory committee. CSHB 1971 also would authorize Texas A&M University at Galveston to conduct studies of shellfish-related diseases and harvesting conditions.

Fees and penalties. CSHB 1971 would specify that the fee of \$1 per barrel of oysters taken from state waters for processing would be paid by the first certified shellfish dealer who handles, stores, packs, labels, unloads at dockside, or holds oysters. It would specify that a barrel is equivalent to three 100-pound containers of oysters. A dealer who packed oysters in containers

that exceeded 110 pounds when packed would be liable for a penalty of \$5 for each such container.

CSHB 1971 would change the deadline for paying the fee or penalty to the 20th day of the month following the month in which the barrel was handled, rather than the 30th day as in current law. A dealer who failed to pay the fee or penalty on time would be liable for an additional penalty of 10 percent of the amount of the fee or penalty due. TDH could suspend and ultimately revoke the certificate of a dealer who failed to pay fees and penalties in full.

The comptroller, rather than TDH, would have to collect the fees and penalties and could adopt rules, forms, and procedures for submission of fees and penalties. The comptroller would have to report to TDH the fees and penalties submitted each month. Before disposition of any fees and penalties, the comptroller would have to deposit 2 percent of the total into the state treasury to be appropriated for administration and enforcement.

The remainder of the fees and penalties would be deposited into the oyster sales account in general revenue. Each year these funds would be allocated to several different oyster-related activities, including:

- collecting bay water and shellfish meat samples;
- contracting for sample analysis for classification and opening or closing of oyster harvesting areas;
- marking the boundaries of areas that are designated open or closed;
- studying oyster diseases and other concerns affecting the availability of oysters for harvest;
- studying organisms that may be associated with human illness and that can be transmitted through the consumption of oysters; and
- promotion and advertising of the Texas oyster industry by TDA, including information, education, and training to consumers on safe and proper handling of oysters.

CSHB 1971 would delete the current requirement that funds from the oyster sales fee be allocated in part to educate the public on health issues relating to oyster consumption. It also would delete the requirement for TDH to obtain information from certified shellfish dealers on location of oysters harvested, identity of the harvesting boat, identity of the captain and number of crew, and identity of the receiving dealer.

Sampling program. CSHB 1971 would establish a new program under the Health and Safety Code requiring TDH to conduct sanitary surveys, bay water and shellfish meat sampling, and any other bay classification activities. The TDH director would have to continue to designate bays as open areas as much as possible while still protecting public health. TDH would have to conduct sampling activities at the earliest possible time after the closure of an oyster harvesting area to confirm the need for closure or if the department had reason to believe that sampling would result in opening the area. TDH would have to follow standards at least as stringent as the guidelines adopted by the National Shellfish Sanitation Program.

Temperature requirements. CSHB 1971 would require a person handling molluscan shellfish to refrigerate the shellfish at or below 45 degrees at all times except during immediate transfer from one storage area or vehicle to another. If temperature abuse of oysters associated with possible *Vibrio parahaemolyticus* illnesses were identified at any point in the market chain, TDH could not close a harvest area unless the temperature abuse did not appear to be the cause of the illness.

Texas Oyster Council. CSHB 1971 would create the Texas Oyster Council, including two members appointed by the board of health from nominations submitted by the Texas Oyster Growers and Dealers Association; two members appointed by the board representing certified shellfish dealers; one member appointed by the chairman of the Interstate Shellfish Sanitation Conference; and two consumer members appointed by the House speaker. A consumer member or the member's spouse could not be a regulated harvester, processor, or wholesaler or an employee of those entities or a shellfish retailer or employee. Members would serve one-year terms expiring August 31st of each year and could not receive compensation or reimbursement for expenses. The council would have to elect a presiding officer.

The council's duties would include advising the board of health on criteria used to designate areas as open or closed, development of licensing standards and procedures, and rules for implementing the oyster regulations, as well as information review.

The council could obtain information furnished to or developed by TDH as part of an investigation of an illness suspected of being related to molluscan

shellfish. This information could include location and handling practices where suspect food may have been served, product labeling and records, distribution and handling practices, product sources, sample collection and laboratory analysis, and any other nonmedical information. The council could review the information and comment on any matter of concern but could not disclose confidential information.

The council could establish procedures for meetings, handling of issues, and reporting. It would not have to conduct open meetings when deliberating confidential records but otherwise would be subject to Government Code, chapter 551, governing open meetings.

Texas Oyster Program. CSHB 1971 would create the Texas Oyster Program under the Agriculture Code to promote and advertise the Texas oyster industry, develop a marketing plan to increase consumption of Texas oysters, conduct a public relations campaign, and provide information, education, and training to consumers on safe and proper handling of oysters. TDA could use appropriated money for administrative costs.

The bill would create an Oyster Advisory Committee for TDA, all of whose members would be appointed by the agriculture commissioner. The advisory committee would provide guidance on oyster programs and activities and on the expenditure of money. Members would serve three-year staggered terms and could be reappointed. Eight members would represent certified shellfish dealers and one would represent consumer interests. Committee members could not receive compensation or reimbursement for expenses. The advisory committee would have to elect a presiding officer and adopt bylaws.

CSHB 1971 would amend the Education Code to allow the marine biology department of Texas A&M University at Galveston to support the expansion and production of oysters from private oyster leases from May through October of each year and to study the possible impacts of conditions on public harvest outside that period. The department could investigate and provide information about oyster-related diseases and other concerns. The studies would have to consider the effects of natural environmental conditions as well as chemical contamination and other factors. The department also could investigate organisms associated with human illness that can be transmitted through oyster consumption, especially *Vibrio parahaemolyticus* and *V. vulnificus*.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house.

**SUPPORTERS
SAY:**

CSHB 1971 would establish ways to address concerns raised last summer when more than 350 people became ill with gastroenteritis because of a specific bacterium in raw oysters and the oyster industry was shut down for about five months. It also would address aspects of the molluscan shellfish industry that need clarification.

The bill would establish an advisory council to TDH and standards for shellfish sanitation that would be consistent with federal guidelines. Also, CSHB 1971 would define the state's standards and procedures for dealing with illnesses linked to raw oyster consumption.

CSHB 1971 would clarify fees and penalties related to oyster containers and would direct those monies toward advertising and promoting the oyster industry through TDA and the Go Texan agriculture promotion program.

The bill would authorize Texas A&M University at Galveston to study Texas oysters and their habitats, the organisms that cause gastroenteritis and other illnesses, environmental conditions related to oyster-borne disease, and the impacts of industry and public harvesting at different times of the year. Currently, specific information is scarce on Texas or on warm water oyster-growing regions. The information from these studies would be critical in the future management of the oyster industry.

**OPPONENTS
SAY:**

CSHB 1971 effectively would cut out education on public health issues relating to oyster consumption as one of the oyster-related activities that can receive funding. Putting that money into ad campaigns and oyster promotion would not make the health issues go away. If consumers and the industry are not educated on health issues related to oyster consumption, more people will get sick in the future. The resulting bad press would outweigh any benefits of marketing or participation in the Go Texan program.

CSHB 1971 would establish an oyster advisory council that would influence TDH's decisions about opening or closing an oyster harvesting area. TDH would not be able to make an independent decision because the advisory council, composed primarily of oyster industry representatives, would put pressure on TDH to keep a harvest area open or to reopen it.

TDH should be required to open or close an oyster harvesting area on the basis of independent findings with the best interests of consumers in mind rather than the industry's wishes. No other agency's advisory boards that include industry members have access to investigation materials or are allowed to comment on regulatory decisions as the Texas Oyster Council could do under this bill.

NOTES:

The original bill included provisions about confidentiality, requiring TDH to conduct activities to allow private oyster production from May through October, following a different set of federal guidelines until the National Shellfish Sanitation Program's guidelines are approved, specific meat sampling guidelines in reopening closed areas, and requiring the Texas Oyster Council to report directly to the Legislature. It also would have provided for a representative of the Texas A&M Sea Grant Program on the Texas Oyster Council and would have specified funding for the Texas A&M research activities.

A rider in Article 6 of the House-passed version of HB 1 by Junell, the general appropriations bill for fiscal 2000-01, would appropriate \$610,000 to TDA for oyster advertising and promotion as part of the Go Texan program and the partner program, contingent upon enactment of HB 1971 or similar legislation.

The companion bill, SB 1685 by Bernsen, passed the Senate on the Local and Uncontested Calendar on April 29 and was reported favorably, without amendment, by the House Public Health Committee on May 5.