

SUBJECT: Regulating and promoting the oyster industry

COMMITTEE: Public Health — favorable, without amendment

VOTE: 8 ayes — Gray, Coleman, Capelo, Delisi, Glaze, Maxey, Uresti,
Wohlgemuth

0 nays

1 absent — Longoria

WITNESSES: For — Joe Nelson, Texas Oyster Growers and Dealers Association

Against — None

On — *Registered but did not testify*: D'Anne Stites, Texas Department of
Agriculture; Jesse Ancira, Michael Rock, Office of the Comptroller

BACKGROUND: Health and Safety Code, secs. 436.103 and 436.104 regulate the state's
oyster program, including fees on oyster sales. Promotion of the oyster
industry in Texas and the composition of the oyster advisory committee is
regulated by Agriculture Code, secs. 47.001 and 47.002.

The 76th Legislature regulated the refrigeration of oysters and the use and
administration of the per-barrel fee on oyster sales. A barrel is equivalent to
three 100-pound containers of oysters. A dealer who packs oysters in
containers that exceed 110 pounds when packed is liable for a \$5 penalty for
each over-packed container. The comptroller is charged with collecting the
fees and penalties, which are used for enforcement as well as for activities
that promote the oyster industry. Comptroller's Office employees meet
oyster boats at the dock and check the weight of the barrels.

The 76th Legislature also created an advisory committee to promote and
advertise the Texas oyster industry. The committee consists of nine
members appointed by the commissioner of agriculture, including eight
members selected from nominations submitted by Texas oyster dealers and

one consumer member selected by the commissioner. Members serve three-year terms and do not receive compensation or reimbursement for expenses.

Separate from Texas' efforts to track the weight of oyster barrels, federal law requires the state to collect data on the number of barrels purchased in the state, which provides an indication of how many oysters are being harvested. This information is collected by the Texas Parks and Wildlife Department (TPWD).

DIGEST:

HB 1954 would amend the Health and Safety Code to direct the Comptroller's Office to monitor oyster fee payment compliance by comparing records rather than other administrative processes. The Comptroller's Office could compare the amount of fees paid with the number of barrels purchased, using data collected by TPWD. If the Comptroller's Office found a discrepancy, it could be resolved by consulting the dealer's log required by the National Shellfish Sanitation Program. An resolved discrepancy between these two sets of numbers would constitute *prima facie* evidence of a violation.

HB 1954 also would amend the Agriculture Code to change the composition of the oyster advisory committee. It would reduce the number of dealer representatives from eight to five and add three members who would represent the grocery retail business, the restaurant industry, and university food science programs, respectively. Appointment to the committee would be determined by the commissioner of agriculture and not by nominations from oyster dealers. The changes to the advisory committee would take effect as the next three terms expire and create vacancies on the committee, which would be filled by the three new categories of representatives.

This bill also would amend the Health and Safety Code and the Agriculture Code to permit reimbursement of expenses for advisory committee members.

HB 1954 would take effect September 1, 2001.

SUPPORTERS
SAY:

HB 1954 would streamline enforcement of regulations regarding oyster sales, thus freeing up oyster fee revenues for promotion of the industry. The Comptroller's Office estimates that it costs more for its employees to go out to docks and inspect the weight of the bags that constitute a barrel than the

amount in any penalties collected. Because the expense of enforcement is paid through fees, this bill would have no negative impact on state revenue or expenditures.

This bill also would reduce fraud in the payment of oyster fees. The comparison of data sets by the Comptroller's Office would be a more reliable source of information than dock checks. Fraudulently reporting two sets of numbers is much more difficult than not pulling into dock on the day the Comptroller's Office is weighing barrels.

HB 1954 would round out the composition of the oyster advisory committee, helping it to be more effective. The advisory committee needs marketing expertise from the food industry in order to evaluate ways to promote the distribution and consumption of Texas oysters.

Changing how committee members are chosen would help ensure that the positions are filled. It may be difficult for the oyster industry to recruit representatives from the food industry who are willing to commit the time to serve on this committee. Due to their broader purview, the commissioner of agriculture and the agency may have contacts that the industry does not. Also, providing reimbursement of expenses would help to attract qualified committee members.

OPPONENTS
SAY:

HB 1954 would dilute control from the oyster dealers who pay the fees to fund the advisory committee and its efforts to promote the oyster industry. Changing the composition of the committee and making those appointments at the commissioner's sole discretion would reduce the oyster industry's control over how those funds are spent to promote and police their own industry.

This bill would legislate a change that could be achieved under current law. Through the current nomination process, if the oyster industry believed that it needed food industry representation, it could nominate a food service person to the committee.

In the past, non-industry representatives on the committee have been unable to make the time commitment needed for the committee to be successful. Because non-industry people do not have a vested interest in the success of

the Texas oyster industry, this could be a bigger problem under the changes proposed in HB 1954.

NOTES: The companion bill, SB 858 by Bernsen, passed the Senate on the Local and Uncontested Calendar on April 5 and was reported favorably, without amendment, by the House Public Health Committee on April 11, making it eligible to be considered in lieu of HB 1954.