

SUBJECT: Prohibiting the sale of unlicensed desert plants

COMMITTEE: Agriculture and Livestock — favorable, without amendment

VOTE: 5 ayes — Hardcastle, B. Brown, Burnam, D. Jones, Laney

0 nays

2 absent — Miller, Swinford

SENATE VOTE: On final passage, May 9 — voice vote

WITNESSES: For — None

Against — James K. Presnal, Texas Nursery and Landscape Association

On — Harvey Fischer, Texas Department of Agriculture

DIGEST: SB 970 would amend the Agriculture Code to prohibit the sale, offer of sale, or transport of several desert plants, unless those plants were marked. Plants subject to this bill would include:

- agave;
- ariocarpus;
- echinocactus;
- echinocereus;
- ferocactus;
- fouquieria;
- mammillaria;
- opuntia; and
- yucca.

A person growing or harvesting a desert plant for sale would be required to register with TDA. Along with the registration, the person would have to provide a statement verifying that the plants either were harvested from the person's property or a harvested from the property of someone who had granted the seller authority to harvest the plants from his or her land. The

seller also would have to mark each plant with identification prescribed by TDA. The department could charge a fee for providing this identification mark.

It would be an offense for a person to advertise, sell, or offer for sale plants that were not marked clearly and distinctly. The offense would be punishable by a fine up to \$1,000, 180 days in jail, or both. In addition, a violation under this bill would be subject to an administrative penalty of \$500 which could be assessed for each day a violation occurred.

TDA could issue and enforce an order to stop the sale of unmarked desert plants. An individual receiving such an order could not sell the plants until they were marked properly. TDA also could seize unmarked plants intended for transfer outside the state with or without process.

TDA would have to adopt rules to administer this bill by December 1, 2003.

The bill would take effect January 1, 2004.

**SUPPORTERS
SAY:**

SB 970 would help curb unauthorized harvesting of desert plants by establishing a system of regulation to ensure that these plants had not been poached from property without a landowner's permission. The desert areas of West Texas have become a prime target for individuals and commercial interests who uproot cacti and sell them at nurseries or transport them out of state. The depredation of these native species upsets the balance of fragile desert ecosystems and is threatening certain species with extinction.

By requiring tagging and registration of desert plants, SB 970 would enable TDA to monitor and track the activities of the cactus market, allowing the department to ensure long term sustainability and prevent over-harvesting of the plants. A recent report by the World Wildlife Fund found that lax regulations and over-harvesting of cactus in the Chihuahuan Desert — which includes portions of West Texas — could endanger plants that provide shelter for birds, food for animals, and a defense against soil erosion.

SB 970 would enable Texas to rein in a problem that could get out of control if significant regulatory measures are not taken. As xeriscaping and water-wise landscaping have grown in popularity in such desert communities as El

Paso, Albuquerque, and Phoenix, the market for cactus rapidly has expanded. Individuals often poach cacti from others' land and transfer them to nursery operators who are unaware of the illegal origin of the plants. By requiring that each plant be marked with an official tag, TDA could ensure that plants were harvested legally with the consent of a landowner, protecting the property rights of Texas citizens.

Other states, including Arizona and California, have enacted laws similar to SB 970, and this bill would enable Texas to protect a valuable natural resource in the same manner. Stringent laws in other states have driven cactus harvesters to West Texas, where they are able to poach valuable plants with near immunity. Texas should follow the lead of these other states so as to prevent irreparable harm to the state's desert lands.

The Legislative Budget Board (LBB) found SB 970 to be revenue neutral, as the modest fee assessed to vendors would offset the cost of administering the program. Most of the monitoring and inspection that would be required by SB 970 already is in place, as TDA already requires registration for vendors.

**OPPONENTS
SAY:**

SB 970 unfairly and unnecessarily would impose a new layer of bureaucracy and expense on nurseries and vendors of desert plants. Nurseries would bear the cost of purchasing tags from TDA to legitimate the sale of desert plants, a factor which could harm the profitability of these sales. TDA should employ methods that already are at its disposal to combat illegal trespassing and unauthorized theft of plants from others' land.

The extensive regulatory program established under SB 970 easily could lead to new expenses for TDA that were not accounted for in LBB's fiscal note. The bill would require involved tracking, record keeping, and enforcement on the part of the department, in addition to extensive burdens on the nursery industry. Although illegal cactus harvesting is a potential problem for the state, the Legislature should not overreact by establishing unneeded and costly bureaucratic requirements.