

SUBJECT: Prohibiting local restrictions on noxious and invasive plants

COMMITTEE: Agriculture and Livestock — favorable, without amendment

VOTE: 5 ayes — Hardcastle, Anderson, B. Brown, Herrero, Olivo

1 nay — Burnam

1 absent — Farrar

SENATE VOTE: On final passage, April 21 — 31-0, on Local and Uncontested Calendar

WITNESSES: (*On House companion bill, HB 2313:*)

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

Against — None

On — Dana Price, Texas Parks and Wildlife Department, Wildlife Diversity Branch

BACKGROUND: Under Agriculture Code, sec. 71.151(a), the Texas Department of Agriculture (TDA) must publish a list of noxious plants that have serious potential to cause economic or ecological harm to the state. TDA can organize the published lists by region.

It is a class C misdemeanor (maximum fine of \$500) to sell, distribute, or import into the state a noxious plant species on the list. It is a separate offense for each noxious plant sold, distributed, or imported.

DIGEST: SB 1091 would prohibit a political subdivision from adopting an ordinance or rule restricting the planting, sale, or distribution of noxious or invasive plant species.

The bill also would authorize the Texas Department of Agriculture to publish a list of invasive plant species with serious potential to cause economic or ecological harm to the state. SB 1091 would extend provisions on noxious plants to invasive plants, including allowing TDA to publish lists of invasive plant species organized by region and making it

a class C misdemeanor to sell, distribute, or import invasive plants on a TDA list.

The bill would take effect September 1, 2005

**SUPPORTERS
SAY:**

SB 1091 is necessary for the state to avoid a patchwork of local prohibitions on certain types of plants, which unnecessarily can inhibit commerce and make compliance almost impossible. Currently, local areas can pass rules prohibiting the importation of invasive plant species. These rules vary from county to county or even city to city, making it difficult for nursery operators or others to know what they may transport. It can be expensive for commercial plant sellers if plants have to be destroyed upon arriving in a locality.

The bill would allow TDA to develop an invasive plant list similar to its noxious plant list. This could help prevent the importation, distribution, and sale of invasive plants, such as nut grass, that can cause serious economic harm or ecological damage. A statewide list, developed with input from industry and academia, would inform nursery operators and other plant importers about what they could transport and distribute and would help protect Texas from these plants.

SB 1091 would not harm the ability of local areas to protect themselves from invasive plants. If a locality wanted to have a plant placed on the statewide list, it could request that TDA do so. TDA would gather input, and, if appropriate, propose a rule to put the plant on the statewide invasive plant list in as short a period as 90 days. This time frame would be comparable to — if not shorter than — the time it takes to pass a local ordinance banning an invasive plant. In the biological world, three months or so should not make a significant difference in the ability of a locality to deal with invasive plants. TDA also could publish lists of invasive plants organized by region.

TDA could work with any state agency, such as the Texas Parks and Wildlife Department (TPWD), to resolve problems harmonizing that agency's aquatic plant list with the statewide invasive plant list.

**OPPONENTS
SAY:**

SB 1091 could affect negatively the ability of local areas to deal with invasive nuisance plants before they became a statewide problem. Because the bill would prohibit political subdivisions from adopting ordinances that restrict invasive plants locally, municipalities might have to wait until

a plant was recognized as a statewide problem before it could be banned from their areas. Getting something on the TDA statewide list could be cumbersome and time consuming.

**OTHER
OPPONENTS
SAY:**

SB 1091 should contain a mechanism for state agencies to coordinate work on invasive plants. TPWD currently has a statewide invasive aquatic plant list, and SB 1091 includes no assurances that these plants would appear on TDA's list.

NOTES:

The companion bill, HB 2313 by Miller, passed the House on April 27 and passed the Senate on the Local and Uncontested Calendar on May 17.