SUBJECT: Disclaimers on noxious and invasive plant lists by public entities

COMMITTEE: Agriculture and Livestock — committee substitute recommended

VOTE: 6 ayes — Hardcastle, C. Howard, Isaac, Landtroop, Lozano, Miles

0 nays

3 absent — C. Anderson, Hughes, Kleinschmidt

WITNESSES: For — Jim Reaves, Texas Nursery & Landscape Association; Marida Favia del Core Borromeo, Exotic Wildlife Association; (*Registered, but did not testify*: Allen Beinke, San Antonio River Authority; Ken Hodges, Texas Farm Bureau; Bob Turner, Texas Seed Trade Association, Texas Poultry Federation, Texas Sheep & Goat Raisers)

Against — Meg Ingis, Austin Chapter of the Native Plant Society; Kathleen Trizna, Native Plant Society of Texas; Dale Bulla; Cheryl Hamilton; (*Registered, but did not testify*: Pat Bulla)

On — Damon Waitt, Lady Bird Johnson Wildflower, Texas Invasive Plants and Pest Council; Clayton Wolf, Texas Parks and Wildlife Department; Catherine Wright-Steele, Texas Department of Agriculture

BACKGROUND: Agriculture Code, sec. 71.151(a) requires the Texas Department of Agriculture (TDA) to publish a list of noxious and invasive plant species that have serious potential to cause economic or ecological harm to the state. This list is published in 4 TAC, part 1, chap. 19, subch. T, sec. 19.300. The importation, distribution, or sale of a plant on this list is a class C misdemeanor (maximum fine of $500).

Agriculture Code, sec. 134.020 requires the Texas Parks and Wildlife Commission (TPWC) to publish a list of harmful or potentially harmful exotic aquatic plant species. This list is published in 31 TAC, part 2, chap. 57, subch. A, section 57.111. The importation, possession, propagation, or sale of a plant on this list is a class B misdemeanor (up to 180 days in jail and/or a maximum fine of $2,000).

Agriculture Code, sec. 71.153 prohibits political subdivisions from restricting the distribution, sale, or planting of noxious or invasive plants.

DIGEST:

CSHB 338 would require any public entity, other than TDA, that produced a list of noxious or invasive terrestrial plants for public distribution to commercial or residential landscapers to provide a specific disclaimer with that list. The disclaimer would have to state that the entity's plant list was only a recommendation and had no legal effect in the state of Texas. It also would have to state that it was lawful to sell, distribute, import, or possess a plant on the list unless the Texas Department of Agriculture labeled the plant as noxious or invasive on the department's plant list.

A public entity other than TDA that produced a list of noxious or invasive terrestrial plant species in printed materials for public distribution to commercial or residential landscapers, including online lists, would have to post the disclaimer in at least 12-point type in a readily visible, conspicuous location for those viewing the list. The bill would require TDA to establish rules for public entities including the disclaimer with lists in other media, including billboards, television, and radio.

CSHB 338 would take effect September 1, 2011, and would apply only to a list published or distributed on or after the bill's effective date.

SUPPORTERS SAY:

CSHB 338 would help decrease public confusion about which of the many available invasive plant lists was official and legally enforceable. It would ensure publicly funded entities were fully informing the public about the legality of plants on their informal lists as compared to the official TDA plant list, which best balances the economic and ecological interests of the state. Greater clarity would improve compliance.

The difficulty the Parks and Wildlife Department (TPWD) has had slowing the rampant spread of invasive *aquatic* plants underscores the importance of maintaining a single, clear, trusted resource of invasive *terrestrial* plants for the public. The disclaimer required by the bill would complement the efforts of the Texas Invasive Species Coordinating Committee (TISCC), of which TDA is a member agency. TISCC maintains a website (www.tiscc.texas.gov) that links the public only to the two official state invasive species lists to avoid confusion with non-official lists.

By requiring that individuals be directed to the official, publicly vetted TDA list in the disclaimer, CSHB 338 would balance the worthy priorities of protecting the state's biodiversity and protecting the state's horticulture businesses, which lose sales when unofficial lists lead Texans to believe legal plants are illegal. The TDA list already contains 31 of the state's most ecologically and economically harmful plants, and the amendment process to add new plants to the list is open to any individual or organization. CSHB 338 would protect nursery and landscape businesses' financial interests and preserve much-needed state sales tax revenue by emphasizing, via the disclaimer, the legality of buying, selling, and possessing plants that are not banned by TDA.

CSHB 338 would not impede regional ecological problem-solving. Local authorities could request to have harmful plants added to the state list, and TDA could organize the list by region, so any possible weakening of local efforts from the disclaimer would be compensated for at the state level. Such additions to the official list could be made quickly enough that the regional problems would not have worsened significantly. The sufficiency of the TDA list is evidenced by the fact that no group has brought an amendment to TDA or TISCC since 2007, when the list was last amended.

CSHB 338 would encourage state agencies to work together to improve regulation of invasive plants, including perfecting the TDA list. CSHB 338 would allow TPWD to continue providing unencumbered technical assistance to ranchers and other such land owners by specifying that the disclaimer need only be provided with lists prepared for commercial and residential landscapers.

OPPONENTS SAY:

CSHB 338 would substantially weaken the ecological fight against invasive plants in the state. By emphasizing the insufficient TDA plant list, the bill would encourage the sale of legal but harmful plants, heightening expenses for the public entities and private citizens that must combat these damaging plants.

The disclaimer required under CSHB 338 would increase public confusion by undermining the credibility of widely used, non-TDA lists. The TDA list is difficult to find, located only in a single table buried in the Administrative Code. The obscurity of the TDA list stands in contrast with the high visibility of the TPWD list. TPWD participates in the multi-sector Texas Invasive Plants and Pest Council (TIPPC), which educates the public via an easily found, user-friendly website of plants suspected of

causing invasive problems (www.texasinvasives.org). TDA does not participate in this collaborative outreach effort.

By giving the TDA plants list exclusive supremacy over all other lists in the mandatory disclaimer, CSHB 338 would consciously undercut ecological protection efforts for the sake of the interests of a particular politically influential industry. The contents of the TDA prohibited plants list have been unduly influenced by the nursery and landscape industry rather than by science. As a result, the TDA list is wildly deficient, omitting about 100 species that biologists and ecologists have concluded damage the ecosystem.

CSHB 338 would be costly for both public and private entities by emphasizing the legality of de facto invasive plants. The damage caused by and the removal of invasive plants are extremely expensive, in terms of both time and money. Nurseries have a right to sell a variety of plants and make a profit, but taxpayer dollars, which local governments and state agencies must use to pay for the spread of these destructive plants, should not have to subsidize those private profits.

Ecological problems are frequently regional. CSHB 338 would undercut local efforts to restrict harmful plants. Waiting until a problem was statewide would make it harder and more costly to address. No provision in the bill or existing statute would require TDA to consider suggested amendments to its list from local governments, much less adopt them.

CSHB 338 would create an adversarial relationship between state agencies when they should be cooperating to tackle the shared problem of invasive plants. By omitting the word "terrestrial," the disclaimer language of CSHB 338 could be problematic if displayed on a mixed terrestrial-and-aquatic invasive plants list. The TDA list does not encompass the entirety of the TPWD exotic plants list, which also is legally enforceable.

OTHER OPPONENTS SAY:

A disclaimer on non-TDA lists would be reasonable, but the proposed disclaimer language would go too far in undermining the credibility and expertise of the organization that produced the list. “Not legally binding” would be acceptable, but describing a scientifically supported, public entity-backed list as simply a “recommendation” would be too dismissive.

NOTES:

The committee substitute:

- changed the disclaimer language to highlight the legality of selling, distributing, importing, and possessing a plant not on the TDA list;
- specified that only lists for public distribution to commercial or residential landscapers would be affected; and
- made the bill requirements applicable only to lists published or distributed on or after the effective date.