

## **BILL ANALYSIS**

Senate Research Center

H.B. 2026  
By: Hilderbran (Jackson)  
Natural Resources  
5/20/2005  
Engrossed

### **AUTHOR'S/SPONSOR'S STATEMENT OF INTENT**

The Texas Parks and Wildlife Code must be updated by the Texas Legislature from time to time because of changes in wildlife management and enforcement theory.

C.S.H.B. 2026 repeals some ambiguous language and clarify a number of statutes related to the taking of wildlife resources, possession of wildlife eggs, disposition of seized wildlife, including exotic livestock and fowl. Furthermore, it repeals the alligator hunting license and allow for a person to take an alligator with a hunting license. This bill provides for the repeal of the maximum number of acres for a private bird hunting area and clarification of area sign placement.

C.S.H.B. 2026 clarifies the definition of game birds held under a Game Bird Breeder's License and includes the egg of a game bird. It repeals a penalty in Chapter 61, which is in direct conflict with a penalty in Chapter 62.

Currently, a person may not hunt an alligator, frog, or a turtle from a boat on public water, but it routinely is allowed. C.S.H.B. 2026 makes this activity legal. It will clarify and simplify taxidermy regulations.

C.S.H.B. 2026 removes the archaic term of "game management officer" in Chapter 62 and replaces it with the correct term "game warden." It deletes the archaic term "civet cat" because a civet cat is included in the list of fur-bearing animals as a skunk. Additionally, this bill amends Section 102.021, Government Code, by allowing for the cost of any cold storage or processing necessary for an unlawfully possessed game bird, fowl, animal, game fish, or exotic animal (Sec. 12.110, Parks and Wildlife Code) to be included as court costs. C.S.H.B. 2026 repeals hunting a fur-bearing animal without landowner consent in Chapter 71.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 1.101, Parks and Wildlife Code, by adding Subdivision (5) to define "take."

SECTION 2. Amends Section 12.013, Parks and Wildlife Code, to authorize an employee of the Texas Parks and Wildlife Department (TPWD) acting within the scope of the employee's authority to possess any wildlife and fish in this state for disease diagnosis or prevention.

SECTION 3. Amends Section 12.110, Parks and Wildlife Code, as follows:

Sec. 12.110. DISPOSITION OF CONFISCATED GAME. (a) Requires TPWD, except as provided by Subsection (d), to donate, whenever donation is reasonably practicable, any exotic animal that is unlawfully possessed or offered for sale in a public eating place to a charitable institution, hospital, or person or persons.

(b) Requires the expense of any storage, care, feeding, or processing that may be necessary for an unlawfully possessed exotic animal to be assessed against the violator on the violator's conviction.

(c) Makes a conforming change.

(d) Authorizes TPWD to sell confiscated live game described by Subsection (a) to the highest of three bidders. Requires TPWD to provide the buyer a receipt for all game sold to the buyer at the time of a sale under this subsection. Requires TPWD to deposit the proceeds of the sale in the state treasury to the credit of suspense account 900 pending the outcome of any action against the person charged with an unlawful action described by Subsection (a). Requires TPWD to deposit the proceeds of the sale into the game, fish, and water safety account If that person is found guilty, pleads guilty or nolo contendere, or is placed on deferred adjudication. Requires TPWD to pay the proceeds of the sale to the person If the person is found not guilty.

(e) Provides that this section does not apply to the lawful possession or sale of an exotic animal.

(f) Provides that in this section, "exotic animal" has the meaning assigned by Section 62.015.

SECTION 4. Amends Subchapter D, Chapter 12, Parks and Wildlife Code, by adding Section 12.308, as follows:

Sec. 12.308. CERTAIN COSTS RECOVERABLE. (a) Provides that the actual cost of investigation, reasonable attorney's fees, and reasonable expert witness fees incurred by TPWD in a civil suit under this subchapter may be recovered in addition to damages for the value of any fish, shellfish, reptile, amphibian, bird, or animal unlawfully killed, caught, taken, possessed, or injured.

(b) Requires any amounts recovered under this section to be credited to the same operating accounts from which the expenditures occurred.

SECTION 5. Amends Section 12.409, Parks and Wildlife Code, to provide that each egg or part of an egg taken, possessed, killed, left to die, imported, exported, offered for sale, sold, purchased, attempted to be purchased, or retained to violation of any provision of this code or a proclamation or regulation adopted under this code constitutes a separate offense.

SECTION 6. Amends Section 42.002(b), Parks and Wildlife Code, to provide that a resident possessing a valid resident trapper's license or fur-bearing animal propagation permit, rather than a resident alligator hunter's license, is not required to have a license issued under this section to take or possess the species covered by the license or permit.

SECTION 7. Amends Section 42.005(c), Parks and Wildlife Code, to make a conforming change.

SECTION 8. Amends the heading to Section 43.073, Parks and Wildlife Code, to read as follows:

Sec. 43.073. AREA LIMITATIONS AND MARKINGS.

SECTION 9. Amends Sections 43.073(a) and (c), Parks and Wildlife Code, as follows:

(a) Requires, rather than authorizes, a private bird hunting area to consist of contiguous acreage owned by an individual, partnership, firm or corporation, rather than limiting the acreage to 8,000.

(c) Requires the signs to be placed at each entrance to a private bird hunting area to identify clearly the boundaries of each licensed area. Deletes existing text requiring signs be placed at all corners.

SECTION 10. Amends Section 44.001, Parks and Wildlife Code, by adding Subdivision (3) to define "game animal."

SECTION 11. Amends Section 44.002, Parks and Wildlife Code, to provide that no person may sell, place in captivity, or engage in the business of propagating any game animal of this state unless the person has obtained a license issued under this chapter from TPWD.

SECTION 12. Amends Section 44.005(b), Parks and Wildlife Code, to require the game breeder to place a suitable permanent tag bearing the game breeder's serial number on the ear of each pronghorn antelope or collared peccary or javelina held in captivity by the game breeder.

SECTION 13. Amends Section 44.006, Parks and Wildlife Code, to make a conforming change.

SECTION 14. Amends Chapter 45, Parks and Wildlife Code, by adding Section 45.0001 as follows:

Sec. 45.0001. DEFINITIONS. Defines "game bird" and "migratory game bird."

SECTION 15. Amends Section 45.001, Parks and Wildlife Code, to provide that no person may possess game birds in captivity for the purpose of selling game bird eggs without first acquiring the proper license authorized to be issued under this chapter.

SECTION 16. Amends Section 45.003, Parks and Wildlife Code, by adding Subsection (c), as follows:

(c) Provides that a class 1 or class 2 commercial game bird breeder's license is valid for selling game bird eggs in this state, regardless of the number of eggs sold.

SECTION 17. Amends the heading to Section 45.005, Parks and Wildlife Code, to read as follows:

Sec. 45.005. RECORDS OF LIVE BIRD AND EGG SALES.

SECTION 18. Amends Section 45.005(a), Parks and Wildlife Code, to provide that no holder of a commercial game bird breeder's license may sell a live game bird or game bird egg without issuing a written document showing the name and serial number of the game bird breeder, the name and address of the purchaser, and the kind or species, rather than a description, and number of game birds or game bird eggs sold. The document shall be delivered to the purchaser.

SECTION 19. Amends Section 45.0061, Parks and Wildlife Code, to make a conforming change.

SECTION 20. Amends Section 45.007(b), Parks and Wildlife Code, to provide that no person may purchase a live game bird or game bird egg except from a holder of a game bird breeder's license, however, this subsection does not prohibit the purchase of live game birds or game bird eggs from a lawful source outside the state.

SECTION 21. Amends Sections 45.008(a) and (b), Parks and Wildlife Code, to make conforming changes.

SECTION 22. Amends Subchapter A, Chapter 62, Parks and Wildlife Code, by adding Section 62.002, as follows:

Sec. 62.002. COMPUTER-ASSISTED REMOTE HUNTING. (a) Defines "computer-assisted remote hunting," "firearm," and "archery equipment."

(b) Prohibits a person from engaging in computer-assisted remote hunting or provide or operate facilities for computer-assisted remote hunting if the animal being hunted is located in this state.

(c) Provides that for purposes of this section, facilities for computer-assisted remote hunting include real property and improvements on the property associated with hunting, including hunting blinds, offices, and rooms equipped to facilitate computer-assisted remote hunting.

(d) Provides that a person who violates this section commits an offense that is a Class B Parks and Wildlife Code misdemeanor, unless it is shown at the trial of the defendant that the defendant has been convicted one or more times before the trial date of a violation of this section, in which case the offense is a Class A Parks and Wildlife Code misdemeanor.

(e) Sets forth exceptions to the application of this section.

SECTION 23. Amends Section 62.003(a), Parks and Wildlife Code, to provide that except as provided in Subsection (b), no person may hunt any wild bird or wild animal, other than an alligator, frog, or turtle, from any type of aircraft or airborne device, motor vehicle, powerboat, or sailboat, or from any other floating device.

SECTION 24. Amends Sections 62.023(a) and (c), Parks and Wildlife Code, as follows:

(a) Authorizes the taxidermist or tanner to sell the mounted game animal, game bird other than a migratory game bird, or head or tanned hide for the amount due for labor performed, if the owner of a lawfully taken game animal or game bird, including the head or hide of a lawfully taken game animal or game bird that has been mounted or tanned, has not claimed the mounted game animal, game bird, or head or the tanned hide within 90 days after notification by a taxidermist or tanner.

(c) Requires a taxidermist or tanner selling a mounted game animal, game bird, or head or tanned hide under this section to maintain, until the second anniversary of the completion of the taxidermy or tanning, documentation of the identity of the person who left the game animal, game bird, head, or hide for taxidermy or tanning. Authorizes documentation under this section to include a hunting tag, wildlife resource document, or cold storage record. Deletes existing text regarding the information included in the report.

SECTION 25. Amends Section 62.068, Parks and Wildlife Code, to authorize a peace officer, game warden, rather than game management officer, or commissioned state park employee to arrest a person found committing a violation of this subchapter without warrant.

SECTION 26. Amends Section 65.006, Parks and Wildlife Code, as follows:

Sec. 65.006. New heading: PERMIT REQUIRED. Deletes existing text from Subsection (a).

SECTION 27. Amends Subchapter A, Chapter 66, Parks and Wildlife Code, by adding Section 66.0071, as follows:

Sec. 66.0071. REMOVAL OF HARMFUL AQUATIC PLANTS. Requires a person, on leaving any public or private body of water in this state, to immediately remove and lawfully dispose of any harmful or potentially harmful aquatic plant included on the list published under Section 66.007(b) that is clinging or attached to specific property belonging to such person.

SECTION 28. Amends Section 71.001(1), Parks and Wildlife Code, to redefine "fur-bearing animal."

SECTION 29. Amends Section 102.021, Government Code, to require a person convicted of an offense to pay, in addition to all other costs, the actual cost of any storage, care, feeding, cold storage, or processing necessary for an unlawfully taken, shipped, or possessed game bird, fowl, animal, game fish, or exotic animal.

SECTION 30. Amends Section 103.022, Government Code, to require the actual costs of investigation, and reasonable expert witness fees in a civil suit or a criminal prosecution for recovery of the value of any fish, shellfish, reptile, amphibian, bird, or animal to be paid or collected.

SECTION 31. Amends Section 822.102(a), Health and Safety Code, to provide that this subchapter does not apply to a county west of the Pecos River that has a population of less than 25,000, a cougar, bobcat, or coyote in the possession, custody, or control of a person that has trapped the cougar, bobcat, or coyote as part of a predator or depredation control activity.

SECTION 32. Amends Section 42.10(e), Penal Code, to provide that an offense under Subsection (a)(5), rather than (1) or (5), is a Class A misdemeanor. Provides that an offense under Subsection (a)(1)-(4) is a state jail felony.

SECTION 33. Repealers:

(1) Section 61.901(c) (relating to certain convictions punishable under the Parks and Wildlife Code), Parks and Wildlife Code;

(2) Section 62.023(b) (relating to the requirement of heads or hides to have the original transportation affidavit attached), Parks and Wildlife Code;

(3) Section 65.007 (License Fees), Parks and Wildlife Code; and

(4) Section 71.004(b) (relating to persons taking a fur-bearing animal on any privately owned land), Parks and Wildlife Code.

SECTION 34. (a) Requires TPWD to conduct a study concerning the use and maintenance of the state parks account and the Texas recreation and parks account.

(b) Sets forth the requirements for the study conducted under Subsection (a).

(c) Requires TPWD to complete the study conducted under Subsection (a) of this section not later than September 1, 2006.

(d) Requires TPWD to submit a written report, not later than January 1, 2007, that summarizes the findings of the study conducted under Subsection (a) of this section to specific legislative members.

SECTION 35. Makes application of Section 12.308, Parks and Wildlife Code, prospective.

SECTION 36. (a) Makes application of Section 12.409, Parks and Wildlife Code, Section 42.10(e), Penal Code, as amended by this Act, and the repeal of Section 61.901(c), Parks and Wildlife Code, prospective.

(b) Makes application of the repeal of Section 65.007, Parks and Wildlife Code, prospective.

SECTION 37. Effective date: upon passage or September 1, 2005.