

BILL ANALYSIS

C.S.S.B. 252
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Culture, Recreation & Tourism
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that the deer breeding industry contributes millions of dollars to the Texas economy and is especially significant to rural communities. Deer breeders and others involved in deer management invest considerable money and time in their work.

Interested parties observe that the internal review process currently used by the Parks and Wildlife Department (TPWD) for denying or revoking a deer permit gives TPWD the authority to take such an action based on the applicant being charged with, rather than convicted of, a violation of the permit. Those parties contend that this authorization puts permit holders at risk of losing their permits, as well as their livelihoods, because of mere allegations of such violations. The parties further contend that, under current TPWD procedures, certain violations can result in a deer being destroyed without the permit holder having had the opportunity to request an appeal or provide proof of an animal's disease status, lineage, or other information. The parties conclude that, as a result, several recent allegations of permit violations have resulted in deer being destroyed by TPWD officials.

While recognizing the need to curtail illegal activity and reduce the risk of spreading disease, many permit holders believe the current TPWD internal review process does not afford permit holders adequate protection and needs to be revised to provide due process for permit holders. C.S.S.B. 252 seeks to improve the review process by providing permit holders with certain due process rights. In addition, the bill seeks to prevent the unnecessary destruction of deer by allowing a deer breeder to conduct genetic testing to establish the lineage of unmarked deer, if such testing is timely completed, and by transferring decision-making authority for the destruction of deer from TPWD to the Texas Animal Health Commission.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Parks and Wildlife Commission in SECTIONS 4, 6, and 7 of this bill.

ANALYSIS

C.S.S.B. 252 amends the Parks and Wildlife Code to authorize the Parks and Wildlife Department (TPWD) to refuse to issue or renew a permit relating to the control, breeding, or management of deer if the applicant fails to submit in a timely manner a completed application on a form supplied by TPWD and all application materials required by TPWD, the required permit fee, accurate reports as applicable, and any additional information TPWD determines is necessary to process the application. The bill makes these permit provisions applicable to a permit to trap, transport, and transplant game animals, game birds, and, for removal, urban white-tailed deer; a permit to trap, transport, and process surplus white-tailed deer; a deer breeder's permit; and a deer management permit.

C.S.S.B. 252 makes its provisions relating to the refusal of TPWD to issue or renew a permit based on certain convictions applicable only to a determination by TPWD of whether to issue a

permit to or renew a permit for an applicant who has a final conviction for a violation of any of the following:

- provisions of law relating to certain special licenses and permits for scientific research, zoological collection, rehabilitation, and educational display; trapping, transporting, and transplanting game animals and game birds; deer breeding; and deer management;
- other provisions of law that are punishable as a Class A or B Parks and Wildlife Code misdemeanor, a Parks and Wildlife Code state jail felony, or a Parks and Wildlife Code felony;
- provisions of law relating to the possession of live game animals; or
- the federal Lacey Act, relating to the control of illegally taken fish and wildlife.

C.S.S.B. 252 requires TPWD, in determining whether to issue a permit to or renew a permit for an applicant with a final conviction, to consider the number of convictions and the seriousness of each conviction; the existence, number, and seriousness of certain other offenses or violations; the length of time between the most recent final conviction and the permit application; whether the final conviction or other offense or violation was the result of negligence or intentional conduct; the applicant's efforts toward rehabilitation; the accuracy of the permit history information provided by the applicant; and other mitigating factors.

C.S.S.B. 252 requires TPWD, not later than the 10th day after the date a decision to refuse to issue or renew a permit has been made, to provide to the applicant a written statement of the reasons for the decision. The bill requires the Parks and Wildlife Commission by rule to adopt procedures consistent with the bill's provisions for TPWD's review of a refusal to issue or renew a permit.

C.S.S.B. 252 requires TPWD, in conducting a review of a decision to refuse to issue or renew a permit, to consider certain specified factors.

C.S.S.B. 252 establishes that the revocation or suspension of a permit is governed by general provisions of the code governing the revocation or suspension of licenses or permits, with the exception that the venue for an appeal of a TPWD decision refusing to issue or renew such a permit or revoking or suspending the permit is a district court in the county where the permitted facility, if applicable, is located, the county where the permittee resides, or Travis County and requires the appeal to be by trial de novo.

C.S.S.B. 252 authorizes TPWD to issue an original or renewal of a deer breeder's permit that is valid for one year, three years, or five years, rather than a permit that is valid for longer than one year, and specifies that the permit period is at the option of the applicant. The bill makes a three-year or five-year permit available only to a person who agrees to submit the permit holder's required annual reports electronically. The bill authorizes the commission to adopt rules allowing TPWD to terminate a permit before the date originally specified for the permit issuance or renewal if the permit holder fails to submit the annual reports electronically as required for a three-year or five-year permit.

C.S.S.B. 252 requires TPWD, after an inspection, to notify a deer breeder in writing when TPWD has reason to believe the deer breeder possesses deer that may pose a disease risk to other deer and requires the notice to include an explanation of the rationale used to establish the disease risk. The bill requires TPWD, if genetic testing is timely conducted, to postpone any actions that may be affected by the test results until the test results are available.

C.S.S.B. 252 prohibits the results of genetic testing from being used as evidence to establish a defense against a fine imposed on a deer breeder found guilty of failure to keep records of all deer in a deer breeder facility as required by state law. The bill authorizes the commission to adopt rules as needed to implement provisions of law relating to a deer breeder's permit.

C.S.S.B. 252 authorizes deer held at a deer breeding facility or on acreage covered by a deer management permit to be destroyed to control or prevent the spread of disease only if an agent of the Texas Animal Health Commission has conducted an epidemiological assessment; the executive director of the animal health commission determines that the deer pose a threat to the health of other deer or other species, including humans, based on the assessment; and the executive director of the animal health commission orders the destruction of the deer.

C.S.S.B. 252 requires the animal health commission to provide written notification of an order to destroy deer to TPWD and the applicable deer breeder or deer management permit holder. The bill requires TPWD to carry out an order to destroy deer after notice has been provided to the applicable deer breeder or deer management permit holder and requires the destruction to be conducted in the presence of and under the direction of animal health commission officials.

C.S.S.B. 252 requires the animal health commission to provide notice to a deer breeder or deer management permit holder before TPWD is authorized to destroy any of the deer held at the deer breeder's facility or deer covered by the management permit and sets out the content and method of delivery of the notice. The bill requires the deer breeder or deer management permit holder to pay to TPWD all costs associated with the epidemiological assessment and destruction of deer and requires the department and the animal health commission to divide the payment to cover the costs incurred by each agency in carrying out their respective duties under provisions of law relating to a deer breeder's permit and a deer management permit.

C.S.S.B. 252 defines "applicant," "final conviction," and "permittee." The bill defines "DNA," "genetic test," and "RNA" for purposes of the bill's provisions relating to genetic testing of deer. The bill defines "animal health commission" for purposes of provisions of law relating to a deer breeder's permit and a deer management permit.

C.S.S.B. 252 makes conforming and nonsubstantive changes.

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.S.B. 252 differs from the original by referencing the federal Lacey Act, rather than the federal Lacey Act Amendments of 1981, in a provision relating to the applicability of a bill provision to a determination of whether to issue a deer breeder's permit to or renew such a permit for an applicant who has a final conviction for a violation of certain state or federal laws.

C.S.S.B. 252 contains a provision not included in the original authorizing the Parks and Wildlife Department (TPWD) to issue an original or renewal of a deer breeder's permit that is valid for one year, three years, or five years and specifying that the permit period is at the option of the applicant. The substitute contains provisions not included in the original establishing that a three-year or five-year permit is available only to a person who agrees to submit the required annual reports electronically and authorizing the Parks and Wildlife Commission to adopt rules allowing TPWD to terminate a permit before the date originally specified for the permit issuance or renewal if the permit holder fails to submit the annual reports electronically as required for a three-year or five-year permit.

C.S.S.B. 252 contains provisions not included in the original relating to the genetic testing of deer, including definitions for "DNA," "genetic test," and "RNA," and authorizing the commission to adopt rules as needed to implement certain provisions relating to a deer breeder's permit.

C.S.S.B. 252 contains provisions not included in the original relating to the destruction of deer held at a deer breeding facility or on acreage covered by a deer management permit issued under state law and defining "animal health commission."

C.S.S.B. 252 differs from the original by requiring the Texas Animal Health Commission to provide notice to a deer breeder or deer management permit holder before TPWD is authorized to destroy any of the deer held at the deer breeder's facility or covered by the permit, as applicable, whereas the original requires TPWD to provide notice to those parties before the department destroys or removes any breeder deer from such a facility or from the acreage covered by the permit. The substitute differs from the original by including among the information required to be contained in the notice of deer destruction the date of destruction and an explanation of the reasons for the destruction, whereas the original includes among that required information the approximate date of destruction or removal and the reasons for the destruction or removal. The substitute contains a requirement not included in the original requiring the notice to include an explanation of any access restrictions imposed on the deer breeder's facility or on the acreage covered by the permit during the destruction of the deer and omits a requirement included in the original requiring the notice to include a short statement identifying the deer to be destroyed or removed.

C.S.S.B. 252 contains provisions not included in the original requiring the deer breeder or deer management permit holder to pay to TPWD all costs associated with the epidemiological assessment and destruction of deer and requiring TPWD and the animal health commission to divide the payment to cover the costs incurred by each agency in carrying out their respective duties related to the destruction of deer.

C.S.S.B. 252 contains a saving provision not included in the original and differs from the original in nonsubstantive ways.