

BILL ANALYSIS

S.B. 1480
By: Hegar
Agriculture & Livestock
Committee Report (Unamended)

BACKGROUND AND PURPOSE

H.B. 3391 81st Legislature, Regular Session, 2009, which was the Texas Parks and Wildlife Department's (TPWD) Sunset bill, included a provision that required TPWD to move from a "black list" of exotic aquatic plants that are prohibited in this state to a "white list" concept of plants that are allowed. TPWD worked throughout the interim to establish an Exotic Aquatic Plant White List and accompanying rules.

After months of deliberation between TPWD and stakeholders, it became evident that the proposal was neither enforceable or realistic for Texas. Approval of such a measure would have severely impacted the state's economy and the biofuel, nursery, and gardening industries throughout Texas.

S.B. 1480 would return the regulation of exotic aquatic plants to a "black list" or "prohibited list" approach. In addition, the bill would adjust the penalties related to possession of an exotic aquatic plant downward to allow lesser penalties for minor violations.

All stakeholders involved in the "white list" and rulemaking process requested that TPWD return to a "black list" approach. This legislation reflects an agreed upon approach between TPWD and all affected stakeholders.

As proposed, S.B. 1480 amends current law relating to the regulation of exotic aquatic species by the Parks and Wildlife Department and provides penalties.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Parks and Wildlife Department is modified in SECTION 4 (Section 66.007, Parks and Wildlife Code) of this bill.

Rulemaking authority is expressly granted to the Texas Parks and Wildlife Commission in SECTION 6 (Section 66.0072, Parks and Wildlife Code) of this bill.

ANALYSIS

SECTION 1. Amends the heading to Chapter 66, Parks and Wildlife Code, to read as follows:

CHAPTER 66. FISH AND AQUATIC PLANTS

SECTION 2. Amends the heading to Subchapter A, Chapter 66, Parks and Wildlife Code, to read as follows:

SUBCHAPTER A. PROVISIONS APPLICABLE TO FRESHWATER AND SALTWATER FISHING AND AQUATIC PLANTS

SECTION 3. Amends the heading to Section 66.007, Parks and Wildlife Code, to read as follows:

Sec. 66.007. EXOTIC HARMFUL OR POTENTIALLY HARMFUL FISH AND SHELLFISH.

SECTION 4. Amends Sections 66.007(a), (b), (c), (e), (j), (k), and (l), Parks and Wildlife Code, as follows:

(a) Provides that no person may import, possess, sell, or place into the public water of this state, rather than the water of this state, exotic harmful or potentially harmful fish or shellfish, rather than potentially harmful fish, shellfish, or aquatic plants, except as authorized by rule or permit issued by the Parks and Wildlife Department (TPWD).

(b) Requires TPWD to publish a list of exotic fish and shellfish for which a permit under Subsection (a) is required. Deletes existing text requiring the list to include exotic aquatic plants that are approved for importation into or possession in this state without a permit.

(c) Requires TPWD to make rules to carry out this section. Deletes existing text requiring TPWD to make rules to carry out the provisions of this section, and in adopting rules that relate to exotic aquatic plants, to strive to ensure that the rules are as permissive as possible without allowing the importation or possession of plants that pose environmental, economic, or health problems.

(e) Defines "exotic fish," "exotic shellfish," and "public water" in this section. Deletes existing text defining "approved list" and "exotic aquatic plant." Makes nonsubstantive changes.

(j) Prohibits an operator of an aquaculture facility under quarantine condition, except as provided in Subsection (k), from discharging waste or another substance from the facility except with approval of TPWD and a wastewater discharge authorization from the Texas Commission on Environmental Quality (TCEQ), rather than the Texas Natural Resource Conservation Commission.

(k)-(l) Makes conforming changes.

SECTION 5. Amends Section 66.0071, Parks and Wildlife Code, 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 exotic aquatic plant on the list of prohibited plants adopted under Section 66.0072, rather than dispose of any exotic aquatic plant not included on the approved list published under section 66.007(b)(2), that is clinging or attached to the person's:

(1) vessel or watercraft; or

(2) trailer, motor vehicle, or other mobile device used to transport or launch a vessel or watercraft.

SECTION 6. Amends Subchapter A, Chapter 66, Parks and Wildlife Code, by adding Section 66.0072, as follows:

Sec. 66.0072. EXOTIC HARMFUL OR POTENTIALLY HARMFUL AQUATIC PLANTS. (a) Defines, in this section, "exotic aquatic plant" and "public water."

(b) Prohibits a person from importing, possessing, selling, or placing into the public water of this state an exotic harmful or potentially harmful aquatic plant except as authorized by Texas Parks and Wildlife Commission (commission) rule or a permit issued by TPWD.

(c) Requires the commission by rule to adopt a list of exotic aquatic plants that may not be imported into or possessed in this state without a permit.

(d) Authorizes the commission to enact an emergency rule as provided by Chapter 2001 (Administrative Procedure), Government Code, to add an exotic aquatic plant to the list of prohibited plants if the plant is determined to be harmful or potentially harmful.

(e) Provides that this section does not apply to any microalgae imported, possessed, used, or sold for biofuel, academic, or research and development purposes. Requires TPWD to consult with the Texas Department of Agriculture (TDA) as necessary to administer this section and prohibits TPWD from adopting rules or permits for microalgae imported, possessed, used, or sold for biofuel, academic, or research and development purposes without written approval from TDA of the rules or permits.

(f) Requires the commission to adopt rules to implement this section.

SECTION 7. Amends Sections 66.012(b), (c), (d), (e), and (f), Parks and Wildlife Code, as follows:

(b) Provides that a person who violates Section 66.003 (Placing Explosives of Harmful Substances in Water), 66.004 (Taking of Fish by Electric Shock Prohibited; Exception), 66.005 (Wilful Destruction of Boat, Seine, or Net), 66.006(c) (relating to possession of seine, strike net, grill net, or trammel), 66.009 (Navigation Districts), 66.015 (Introduction of Fish, Shellfish, and Aquatic Plants), 66.021 (Protected Fish: Display of Documents), or 66.0091 (Fishing in Certain Man-Made Waterways) of this code commits an offense that is a Class B Parks and Wildlife Code misdemeanor. Deletes existing text providing that a person who violates Section 66.007 has committed an offense.

(c) Provides that an offense under Section 66.004, 66.006(c), or 66.015 is a Class A Parks and Wildlife Code misdemeanor if it is shown at the trial of a person for the offense that the person has been previously convicted one time of a violation of the same section. Deletes existing text providing that if it is shown at the trial of the defendant for a violation of Section 66.004, 66.006(c), 66.007, or 66.015 of this code that the defendant has been convicted once before the trial date of a violation of the same section, on conviction the defendant shall be punished for a Class A Parks and Wildlife Code misdemeanor.

(d) Provides that an offense under Section 66.004 or 66.015 is a Parks and Wildlife Code felony if it is shown at the trial of a person for the offense that the person has been previously convicted two or more times of a violation of the same section. Deletes existing text providing that if it is shown at the trial of the defendant for a violation of Section 66.004, 66.007, or 66.015 of this code that the defendant has been convicted two or more times before the trial date of a violation of the same section, on conviction the defendant shall be punished for a Parks and Wildlife Code felony.

(e) Provides that an offense under Section 66.007, 66.0072, 66.020(f), or 66.020(g) or a proclamation adopted by the commission under those sections is a Class B Parks and Wildlife Code misdemeanor if it is shown at the trial of a person for the offense that the person has been previously convicted one time of a violation of the same section. Deletes existing text providing that if it is shown at the trial of the defendant for a violation of Section 66.020(f) or 66.020(g) or a proclamation adopted by the commission under those section that the defendant has been convicted within five years before the trial date of a violation of the section for which the defendant is being prosecuted, on conviction the defendant shall be punished for a Class B Parks and Wildlife Code misdemeanor.

(f) Provides that an offense under Section 66.007, 66.072, 66.020(f), or 66.020(g) or a proclamation adopted by the commission under those sections is a Class A Parks and Wildlife Code misdemeanor if it is shown at the trial of a person for the offense that the person has been previously convicted two or more times of a violation of the same section. Deletes existing text providing that if it is shown at the trial for a violation of Section 66.020(f), or 66.020(g) of this code or a proclamation adopted by the commission under those sections that the defendant has been convicted two or more times within five years before the trial date of a violation of the section for which the defendant is being prosecuted, on conviction the defendant shall be punished for a Class A Parks and Wildlife Code misdemeanor.

SECTION 8. Repealers: Sections 66.007(m) (relating to importation of exotic aquatic plants), (n) (relating to evaluation of importation harm), (o) (relating to approved importation list), (p) (relating to expedited process for list inclusion), (q) (relating to final list approval), (r) (relating to exotic species permits), and (s) (relating to restriction of authority), Parks and Wildlife Code.

SECTION 9. (a) Provides that on the effective date of this Act, the list of harmful or potentially harmful plants that was in effect immediately before the publication of the list of approved plats required by Section 66.007(b), Parks and Wildlife Code, as amended by Section 14, Chapter 952 (H.B. 3391), Acts of the 81st Legislature, Regular Session, 2009, is the list of exotic aquatic plants required by Section

66.0072, Parks and Wildlife Code, as added by this Act, and is required to be the list in effect until amended by TPWD.

(b) Prohibits TPWD from enforcing the permit requirements or prohibited actions regarding exotic aquatic plants that are on the list under Section 66.00072, Parks and Wildlife Code, as added by this Act, before the effective date of this Act.

(c) Provides that after the effective date of this Act, TPWD is not required to maintain or publish the list of approved exotic aquatic plants for which a permit is not required under Section 66.007, Parks and Wildlife Code, as that section provided before the effective date of this Act.

(d) Makes application of Section 66.012, Parks and Wildlife Code, as amended by this Act, prospective.

SECTION 10. Effective date: upon passage or September 1, 2011.

EFFECTIVE DATE

Effective date: upon passage or September 1, 2011.