

By: Deshotel

H.B. No. 3335

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of oyster resources.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 76.001, Parks and Wildlife Code, is amended by adding Subdivisions (1-a), (1-b), (1-c), (2-a), (4), and (5) and amending Subdivision (2) to read as follows:

(1-a) "Cultivated oyster bed" means an oyster bed that is planted by a person for the purpose of oyster resources management, including the growing, transplanting, or harvesting of oysters.

(1-b) "Location by the department" means the issuance by the department of a certificate that authorizes a locator to plant or cultivate an oyster bed on state-owned submerged land.

(1-c) "Locator" means a person who holds a certificate of location issued by the department under Section 76.012.

(2) "Natural oyster bed" means an area that is not a cultivated oyster bed where at least five barrels of oysters are found within 2,500 square feet of any position on a reef or bed.

(2-a) "Non-state-owned submerged land" means submerged land that has been conveyed to another person and to which the state does not hold title, including land described by Sections 76.004(a) and 76.022.

(4) "Private oyster bed" means an oyster bed that is:

(A) located on land that is non-state-owned

1 submerged land;

2 (B) located on state-owned submerged land leased
3 by a locator; or

4 (C) a cultivated oyster bed, including a
5 cultivated oyster bed on land subject to riparian rights under
6 Section 76.004(b) or (c).

7 (5) "State-owned submerged land" has the meaning
8 assigned by Section 11.0131(a), Natural Resources Code. The term
9 does not include non-state-owned submerged land.

10 SECTION 2. Section 76.002, Parks and Wildlife Code, is
11 amended to read as follows:

12 Sec. 76.002. [~~DESIGNATION OF~~] PUBLIC OYSTER [~~AND PRIVATE~~]
13 BEDS. [~~(a)~~] All natural oyster beds that are not private oyster
14 beds are public.

15 [~~(b) All oyster beds not designated as private are public.~~]

16 SECTION 3. Section 76.003, Parks and Wildlife Code, is
17 amended to read as follows:

18 Sec. 76.003. BEDS SUBJECT TO LOCATION BY DEPARTMENT. (a)
19 Except as otherwise provided by this section [~~in Section 76.004 of~~
20 ~~this code~~], an oyster bed or reef, other than a natural oyster bed,
21 is subject to location by the department. This section does not
22 apply to a bed or reef that has been exhausted within an eight-year
23 period.

24 (b) An oyster bed or reef that is located on non-state-owned
25 submerged land or on submerged land that is subject to the rights of
26 a riparian owner under Section 76.004, is not subject to location by
27 the department.

1 SECTION 4. Section 76.004, Parks and Wildlife Code, is
2 amended by adding Subsection (d) to read as follows:

3 (d) A person who is a riparian owner with exclusive rights
4 with respect to the use of a creek, bayou, lake, or cove under
5 Subsection (a) or (b) is protected against trespass in the same
6 manner as a freeholder. This subsection applies only as long as the
7 owner clearly and distinctly marks the boundaries of the private
8 oyster bed with buoys or other permanent markers easily visible
9 above the surface of the water and maintains those markers in their
10 correct positions.

11 SECTION 5. The heading to Section 76.006, Parks and
12 Wildlife Code, is amended to read as follows:

13 Sec. 76.006. APPLICATION FOR LOCATION BY THE DEPARTMENT;
14 FEE.

15 SECTION 6. Section 76.006(a), Parks and Wildlife Code, is
16 amended to read as follows:

17 (a) An individual who is a ~~[Any]~~ citizen of the United
18 States and a resident of this state or a domestic entity as that
19 term is defined by the Business Organizations Code ~~[any domestic~~
20 ~~corporation]~~ may file a written application with the department for
21 a certificate authorizing the applicant to ~~[plant oysters and]~~ make
22 a private oyster bed in the public water of the state.

23 SECTION 7. Section 76.009(b), Parks and Wildlife Code, is
24 amended to read as follows:

25 (b) If the location is subject to certification, the
26 applicant ~~[department]~~ shall have the metes and bounds of the
27 location surveyed by a competent surveyor.

1 SECTION 8. Section 76.015, Parks and Wildlife Code, is
2 amended to read as follows:

3 Sec. 76.015. RIGHTS OF LOCATOR. (a) A person who is the
4 ~~[The]~~ holder of a certificate of location under ~~[as provided for in]~~
5 Section 76.012 ~~[of this code]~~ is protected in the person's ~~[his]~~
6 possession of the location described by the certificate against
7 trespass in the same manner as are freeholders.

8 (b) This section applies only as long as the stakes or pipes
9 and buoys required by this chapter are maintained in the ~~[their]~~
10 correct positions, easily visible above the surface of the water to
11 mark the boundaries of the location as described by the certificate
12 issued by the department under Section 76.012 ~~[and the locator~~
13 ~~complies with the law and the regulations governing the fish and~~
14 ~~oyster industries]~~.

15 SECTION 9. Sections 76.017(a) and (c), Parks and Wildlife
16 Code, are amended to read as follows:

17 (a) A locator ~~[The holder of a certificate of location]~~
18 shall pay to the department the greater of \$6 per acre of location
19 per year or an amount set by the commission to rent the location
20 under the certificate. ~~[In lieu of that payment, the commission may~~
21 ~~set the required payment under this section in a greater amount.]~~

22 (c) A locator ~~[The holder of a certificate]~~ shall pay the
23 department a late penalty fee equal to 10 percent of the amount due
24 for any rental, transfer, sale, or renewal fee that is not paid when
25 due.

26 SECTION 10. Section 76.018(b), Parks and Wildlife Code, is
27 amended to read as follows:

1 (b) The commission shall determine renewal procedures to
2 follow at the end of each lease term. The procedures must include:

3 (1) a determination that the lease renewal will be
4 based on:

5 (A) the need for depuration of polluted oysters;

6 (B) consideration of whether the effect of the
7 cultivated oyster bed on the habitat and ecosystem is beneficial;

8 and

9 (C) other considerations specified in the oyster
10 management plan;

11 (2) payment of a \$200 fee due on renewal of the lease;

12 (3) a condition that the current leaseholder will be
13 offered a first right of refusal if the lease is renewed under this
14 chapter; and

15 (4) any other conditions for the lease renewal that do
16 not conflict with this chapter.

17 SECTION 11. Sections 76.021(a) and (f), Parks and Wildlife
18 Code, are amended to read as follows:

19 (a) The oyster shell recovery and replacement program
20 account is a separate interest-bearing account in the game, fish,
21 and water safety account. The account consists of money deposited
22 to the account under this section. The account is exempt from the
23 application of Section 403.095, Government Code.

24 (f) The department shall consult with members of the oyster
25 industry regarding the cultivation and management of oysters and
26 oyster beds in this state.

27 SECTION 12. Subchapter A, Chapter 76, Parks and Wildlife

1 Code, is amended by adding Sections 76.022 and 76.023 to read as
2 follows:

3 Sec. 76.022. NAVIGATION DISTRICT LEASES FOR CREATION OF
4 PRIVATE OYSTER BEDS. (a) In this section:

5 (1) "District-owned submerged land" means submerged
6 land or flats conveyed to a navigation district, including by a
7 conveyance under Article 8225, Revised Statutes.

8 (2) "Navigation district" has the meaning assigned to
9 "district" by Section 60.001(1), Water Code.

10 (b) A navigation district may lease district-owned
11 submerged land for the creation of cultivated oyster beds and for
12 the protection of natural oyster beds.

13 (c) The holder of a lease of submerged land under this
14 section is protected against trespass in the same manner as a
15 freeholder. This subsection applies only as long the lease holder
16 clearly and distinctly marks the boundaries of the private oyster
17 bed with buoys or other permanent markers easily visible above the
18 surface of the water and maintains those markers in their correct
19 positions.

20 (d) The holder of a lease under this section must obtain a
21 permit under Subchapter B.

22 (e) Not later than the 30th day after the date a lease under
23 this section is executed, the lease holder must provide the
24 department with notice of the lease.

25 Sec. 76.023. NON-STATE-OWNED SUBMERGED LAND. (a) The
26 commission shall adopt rules to:

27 (1) promote the use of non-state-owned submerged land

1 for oyster resource management; and

2 (2) in accordance with Nationwide Permit 48 issued by
3 the United States Army Corps of Engineers or a substantially
4 similar federal requirement, allow the discharge of dredged or fill
5 material, the placement of structures, and any activities necessary
6 for commercial shellfish aquaculture operations in authorized
7 project areas, including restricted areas closed by the Department
8 of State Health Services.

9 (b) The department may not collect a land lease fee for
10 non-state-owned submerged land.

11 (c) The department may set fees for the administration of
12 this section in an amount not to exceed the administrative costs
13 directly associated with administering this section. The
14 department may reduce the amount of a fee to account for the habitat
15 and ecosystem benefits provided by cultivated oyster beds on
16 non-state-owned submerged land.

17 SECTION 13. Sections 76.031(b) and (c), Parks and Wildlife
18 Code, are amended to read as follows:

19 (b) Only an individual [~~those persons~~] who is a citizen of
20 the United States and a resident [~~are citizens~~] of this state
21 [~~Texas~~] or a domestic entity as that term is defined by the Business
22 Organizations Code [~~corporations composed of American citizens and~~
23 ~~chartered by this state to engage in the culture of oysters or to~~
24 ~~transact business in the purchase and sale of fish and oysters] may
25 apply for a permit.~~

26 (c) The application must:

27 (1) state the purpose for taking oysters; and

1 (2) specify:

2 (A) [give] the quantity of oysters to be taken
3 from specified [~~designated~~] areas;

4 (B) the start and end dates for the taking and
5 transplanting of oysters;

6 (C) the areas from which the oysters will be
7 taken; and

8 (D) the area where the oysters will be deposited
9 as described:

10 (i) by a certificate of location issued
11 under Section 76.012; or

12 (ii) in writing by a person who owns or
13 leases a private oyster bed.

14 SECTION 14. Section 76.032, Parks and Wildlife Code, is
15 amended to read as follows:

16 Sec. 76.032. DISCRETION TO ISSUE PERMIT. The department
17 may issue or refuse to issue a permit to any applicant. If the
18 department refuses to issue a permit, the department must show good
19 cause for the refusal in a written order that demonstrates using
20 sound biological data that the issuance of the permit would cause
21 harm to human health, the environment, or natural resources.

22 SECTION 15. Section 76.033(b), Parks and Wildlife Code, is
23 amended to read as follows:

24 (b) The department shall:

25 (1) mark off the exact area of beds or reefs from which
26 oysters may be taken;

27 (2) designate the bottoms on which oysters may be

1 deposited if they are taken to be prepared for market;

2 (3) require the permittee to cull the oysters on the
3 grounds from which ~~[where]~~ they are taken ~~[to be located]~~; and

4 (4) specify what implements may be used in taking
5 oysters from oyster beds that are not private oyster beds.

6 SECTION 16. Section 76.035, Parks and Wildlife Code, is
7 amended to read as follows:

8 Sec. 76.035. OYSTERS PROPERTY OF PERMITTEE. All oysters
9 taken, ~~[or]~~ deposited, or cultivated in public water by the holder
10 of an oyster permit under the terms of a permit are the personal
11 property of the permit holder.

12 SECTION 17. Section 76.037, Parks and Wildlife Code, is
13 amended to read as follows:

14 Sec. 76.037. THEFT OF OYSTERS FROM PRIVATE BED. No person
15 may ~~[fraudulently]~~ take oysters from a ~~[placed on]~~ private oyster
16 bed ~~[beds]~~ without the consent of the owner of the private bed or
17 from an oyster bed ~~[beds]~~ or deposit ~~[deposits]~~ made for the purpose
18 of preparing oysters for market without the consent of the owner of
19 the oysters who lawfully deposited them.

20 SECTION 18. Section 76.039, Parks and Wildlife Code, is
21 amended by adding Subsection (c) to read as follows:

22 (c) Subsection (a) applies only to the gathering of oysters
23 from an area declared prohibited under Section 436.091, Health and
24 Safety Code.

25 SECTION 19. Section 76.116(b), Parks and Wildlife Code, is
26 amended to read as follows:

27 (b) The department may authorize by permit the

1 transplanting of oysters from restricted areas or other areas
2 designated by the department to private oyster beds [~~leases~~].

3 SECTION 20. Section 76.301, Parks and Wildlife Code, is
4 amended by amending Subsections (a) and (d) and adding Subsection
5 (h) to read as follows:

6 (a) Except as provided by Subsection (h), the [~~The~~]
7 commission by proclamation may regulate the taking, possession,
8 purchase, and sale of oysters. A proclamation issued under this
9 section must contain findings by the commission that support the
10 need for the proclamation.

11 (d) Except as provided by Subsection (h), a [~~A~~] proclamation
12 of the commission under this section prevails over:

13 (1) any conflicting provision of Subchapter A, B, or C
14 of this chapter to the extent of the conflict; and

15 (2) a proclamation of the commission issued under the
16 Wildlife Conservation Act of 1983 (Chapter 61 of this code).

17 (h) The commission may not make a proclamation regulating
18 the taking from or possession, purchase, or sale of oysters taken
19 from non-state-owned submerged land that conflicts with Subchapter
20 A, B, or C.

21 SECTION 21. (a) The change in law made by this Act applies
22 only to an offense committed on or after the effective date of this
23 Act. An offense committed before the effective date of this Act is
24 governed by the law in effect on the date the offense was committed,
25 and the former law is continued in effect for that purpose. For
26 purposes of this section, an offense was committed before the
27 effective date of this Act if any element of the offense occurred

1 before that date.

2 (b) Section 76.022, Parks and Wildlife Code, as added by
3 this Act, applies to a lease for district-owned submerged land for
4 the creation of cultivated oyster beds or for the protection of
5 natural oyster beds, regardless of when the lease was executed.

6 SECTION 22. This Act takes effect immediately if it
7 receives a vote of two-thirds of all the members elected to each
8 house, as provided by Section 39, Article III, Texas Constitution.
9 If this Act does not receive the vote necessary for immediate
10 effect, this Act takes effect September 1, 2015.