

House Bill 51
Senate Amendments
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SECTION 1. Subchapter A, Chapter 76, Parks and Wildlife Code, is amended by adding Section 76.0205 to read as follows:

Sec. 76.0205. SUSTAINABILITY OF OYSTER INDUSTRY. (a) In order to enhance the viability of commercial oyster fishing and ensure the sustainability of the oyster industry to accommodate the highest number of commercial oyster fishing boats, a person who purchases oysters under Section 47.0091 and holds a shellfish certificate, as defined by Section 436.002, Health and Safety Code, must:
(1) distribute, in an area designated by the department, oyster shells or other cultch material approved by the department in an amount equal to not less than 30 percent of the total volume of oysters purchased by the person in the previous license year; or
(2) pay a fee to the department in an amount calculated under Subsection (c).
(b) The distribution of oyster shells or other cultch material must be directly supervised by an agent or employee of the department.
(c) The department shall calculate the current market cost of the acquisition and deposition of cultch material on a per cubic yard basis. The fee charged under Subsection (a)(2) is the market cost established under this subsection multiplied by 30 percent of the total volume of oysters purchased by the person in the previous license year. The fee charged under this section shall be deposited to the credit of the oyster shell recovery and replacement program account.
(d) A person who possesses oysters that do not meet the requirements of Section 76.112:
(1) shall replace the oysters in the beds from which they were taken as directed by an authorized employee of the

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department; and

(2) is subject to any penalty and must perform any remedy authorized by law.

SECTION 2. Sections 76.101(b) and (d), Parks and Wildlife Code, are amended to read as follows:

(b) ~~No [Except as provided in Subsection (d) of this section, no]~~ person may take or attempt to take oysters from the public water of this state, without the use of a boat, for pay or for the purpose of sale, barter, or exchange or any other commercial purpose without first having acquired from the department a commercial oyster fisherman's license.

(d) Each member of the [The captain and] crew of a licensed commercial oyster boat ~~is [are not]~~ required to have a general commercial [oyster] fisherman's license [licenses] to take oysters while they are on a licensed boat that is being used to take oysters.

SECTION 3. Section 76.118, Parks and Wildlife Code, is amended by amending Subsection (a) and adding Subsections (e-2) and (e-3) to read as follows:

(a) Except as provided in Subsections (b), ~~[and] (c), (e-2), and (e-3) [of this section]~~, a person who violates a provision of this subchapter or a regulation of the commission issued under this subchapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

(e-2) If it is shown at the trial of a defendant, including the captain of a commercial oyster boat, a member of the crew of a commercial oyster boat, or a person who purchases oysters from the captain or a member of the crew of a commercial oyster boat, for a violation of a statute or a regulation adopted relating to oyster size that the defendant has been convicted

SECTION 2. Same as House version.

SECTION 3. Section 76.118, Parks and Wildlife Code, is amended by amending Subsection (a) and adding Subsections (e-2), (e-3), (e-4), and (e-5) to read as follows: [FA1(1)]

(a) Except as provided in Subsections (b), ~~[and] (c), (e-2), and (e-3) [of this section]~~, a person who violates a provision of this subchapter or a regulation of the commission issued under this subchapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

(e-2) The punishment for an offense otherwise punishable under Subsection (a) is a Class B Parks and Wildlife misdemeanor if it is shown on the trial of the offense that:

(1) the defendant is the captain of a commercial oyster boat or a member of the crew of a commercial oyster boat;

(2) the provision or regulation violated relates to oyster size;

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once in the oyster season in which the offense under trial was allegedly committed of a violation of a statute or a regulation adopted relating to oyster size, the defendant is guilty of a Class B Parks and Wildlife Code misdemeanor.

(e-3) If it is shown at the trial of a defendant, including the captain of a commercial oyster boat, a member of the crew of a commercial oyster boat, or a person who purchases oysters from the captain or a member of the crew of a commercial oyster boat, for a violation of a statute or a regulation adopted relating to oyster size that the defendant was in possession of a cargo of oysters in which 30 percent or more of the oysters were less than three inches in length along an imaginary straight line through the long axis of the shell, the defendant is guilty of a Class B Parks and Wildlife Code misdemeanor.

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and

(3) the defendant has previously been convicted at least twice for a violation of a provision or regulation relating to oyster size.

(e-3) The punishment for an offense otherwise punishable under Subsection (a) is a Class C Parks and Wildlife misdemeanor, with an attendant license suspension under Section 76.1181, if it is shown on the trial of the offense that:

(1) the defendant is the captain of a commercial oyster boat or a member of the crew of a commercial oyster boat;

(2) the provision or regulation violated relates to oyster size and the defendant was in possession of a cargo of oysters in which 30 percent or more of the oysters measured less than three inches in length along an imaginary straight line through the long axis of the shell; and

(3) the defendant has previously been convicted one time for a violation of a provision or regulation relating to oyster size and the defendant was in possession of a cargo of oysters in which 30 percent or more of the oysters measured less than three inches in length along an imaginary straight line through the long axis of the shell.

(e-4) The punishment for an offense otherwise punishable under Subsection (a) is a Class B Parks and Wildlife misdemeanor, with an attendant license suspension under Section 76.1181, if it is shown on the trial of the offense that:

(1) the defendant is the captain of a commercial oyster boat or a member of the crew of a commercial oyster boat;

(2) the provision or regulation violated relates to oyster size and the defendant was in possession of a cargo of oysters in which 30 percent or more of the oysters measured less than three inches in length along an imaginary straight line through the long axis of the shell; and

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(3) the defendant has previously been convicted at least two times for a violation of a provision or regulation relating to oyster size and the defendant during both offenses was in possession of a cargo of oysters in which 30 percent or more of the oysters measured less than three inches in length along an imaginary straight line through the long axis of the shell.

(e-5) It is a defense to prosecution under Subsection (a) for a violation of a statute or regulation adopted relating to oyster size that the defendant is a person who purchased oysters from the captain or a member of the crew of a commercial oyster boat and the purchaser was in possession of a cargo of oysters in which less than 30 percent of the oysters were less than three inches in length along an imaginary straight line through the long axis of the shell. [FA1(2)]

SECTION 4. Subchapter C, Chapter 76, Parks and Wildlife Code, is amended by adding Section 76.1181 to read as follows:

Sec. 76.1181. SUSPENSION OF LICENSE. (a) For purposes of this section, "final conviction" includes a plea of guilty or nolo contendere to or the imposition of deferred adjudication for an offense.

(b) On final conviction for an offense punishable under Section 76.118(e-3), the commercial oyster boat license of the boat used in the commission of the violation is suspended for 30 days.

(c) On final conviction for an offense punishable under Section 76.118(e-3), the commercial oyster boat captain's license of the captain of the boat used in the commission of the violation is suspended for 30 days. During the period of suspension, the holder of the suspended license may not purchase a general commercial fisherman's license or a

SECTION 4. Subchapter C, Chapter 76, Parks and Wildlife Code, is amended by adding Section 76.1181 to read as follows:

Sec. 76.1181. SUSPENSION OF LICENSE. (a) For purposes of this section, "final conviction" includes a plea of guilty or nolo contendere to or the imposition of deferred adjudication for an offense.

(b) On final conviction for an offense punishable under Section 76.118(e-3) or (e-4), the commercial oyster boat license of the boat used in the commission of the violation is suspended for 30 days. [FA1(4)]

(c) On final conviction for an offense punishable under Section 76.118(e-3) or (e-4), the commercial oyster boat captain's license of the captain of the boat used in the commission of the violation is suspended for 30 days. During the period of suspension, the holder of the suspended license may not purchase a general commercial fisherman's license or

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commercial oyster fisherman's license.

(d) On final conviction for an offense punishable under Section 76.118(e-3), the general commercial fisherman's license of a member of the crew of a boat on which the violation was committed is suspended for 30 days. During the suspension period, the holder of the suspended license may not purchase a commercial oyster boat captain's license or a commercial oyster fisherman's license.

(d-1) On final conviction for an offense punishable under Section 76.118(e-3), the commercial oyster fisherman's license of the person who takes or attempts to take oysters without the use of a boat is suspended for 30 days.

(e) On final conviction for an offense punishable under Section 76.118(e-3), any license issued by the department to a person that purchases oysters is suspended for 30 days. During the suspension period, the holder of the suspended license may not purchase a license issued by the department allowing the taking or purchase of oysters.

(f) A suspension period described by this section must be served during the public oyster season in which the violation occurred, unless less than 30 days remain in the public oyster season, in which case the suspension must be served at the beginning of the next public oyster season.

SECTION 5. Section 76.119, Parks and Wildlife Code, is

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a commercial oyster fisherman's license. [FA1(5)]

(d) On final conviction for an offense punishable under Section 76.118(e-3) or (e-4), the general commercial fisherman's license of a member of the crew of a boat on which the violation was committed is suspended for 30 days. During the suspension period, the holder of the suspended license may not purchase a commercial oyster boat captain's license or a commercial oyster fisherman's license. [FA1(6)]

(d-1) On final conviction for an offense punishable under Section 76.118(e-3) or (e-4), the commercial oyster fisherman's license of the person who takes or attempts to take oysters without the use of a boat is suspended for 30 days. [FA1(7)]

(e) On final conviction for the third offense within five years of the commission of an offense punishable under Section 76.118, for a violation of a provision or regulation relating to oyster size in which the conviction was for possession of a cargo of oysters in which 30 percent or more of the oysters measured less than three inches in length along an imaginary straight line through the long axis of the shell, any license issued by the department to a person that purchases oysters is suspended for 30 days. During the suspension period, the holder of the suspended license may not purchase a license issued by the department allowing the taking or purchase of oysters. [FA1(3);FA1(8)]

(f) A suspension period described by this section must be served during the public oyster season in which the violation occurred, unless less than 30 days remain in the public oyster season, in which case the suspension must be served at the beginning of the next public oyster season.

SECTION 5. Section 76.119, Parks and Wildlife Code, is

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amended by amending Subsection (a) and adding Subsections (c) and (d) to read as follows:

(a) If a vessel licensed as a commercial oyster boat is involved in a violation of this chapter, the captain of the vessel licensed as a commercial oyster boat is primarily responsible for the violation. A member of the crew of a vessel licensed as a commercial oyster boat is not guilty of a violation unless the member of the crew committed the violation against the captain's orders, except for a violation of Section 76.109, 76.112, or 76.116, in which case each person on the vessel is responsible for the violation.

(c) The captain of a vessel licensed as a commercial oyster boat shall identify the name of the captain, the vessel, and each member of the crew to each purchaser of oysters.

(d) A person who purchases oysters under Section 47.0091, who holds a shellfish certificate as defined by Section 436.002, Health and Safety Code, and who purchases oysters from a captain of a vessel licensed as a commercial oyster boat, the holder of a commercial oyster boat license, or a member of the crew of a commercial oyster boat in violation of Section 76.109, 76.112, or 76.116 or this section may not possess the oysters and is subject to any penalty prescribed by law.

SECTION 6. Section 76.301, Parks and Wildlife Code, is amended by amending Subsections (c) and (f) and adding Subsection (h) to read as follows:

(c) A proclamation issued under Subsection (a) of this section may limit the quantity and size of oysters that may be taken, possessed, sold, or purchased and may prescribe the times, places, conditions, and means and manner of taking oysters. ~~[However, measures dealing with sale and purchase may only~~

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amended by amending Subsection (a) and adding Subsections (c) and (d) to read as follows:

(a) If a vessel licensed as a commercial oyster boat is involved in a violation of this chapter, the captain of the vessel licensed as a commercial oyster boat is primarily responsible for the violation. A member of the crew of a vessel licensed as a commercial oyster boat is not guilty of a violation unless the member of the crew committed the violation against the captain's orders, except for a violation of Section 76.109, 76.112, or 76.116, in which case each person on the vessel is responsible for the violation.

(c) The captain of a vessel licensed as a commercial oyster boat shall identify the name of the captain, the vessel, and each member of the crew to each purchaser of oysters.

(d) A person who purchases oysters under Section 47.0091, who holds a shellfish certificate as defined by Section 436.002, Health and Safety Code, and who purchases oysters from a captain of a vessel licensed as a commercial oyster boat, the holder of a commercial oyster boat license, or a member of the crew of a commercial oyster boat in violation of Section 76.109, or 76.112 or this section may not possess the oysters and is subject to any penalty prescribed by law.
[FA1(9)]

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~~be implemented at first sale or exchange transaction.]~~

(f) A person who violates a proclamation issued under ~~Subsection (a) of~~ this subchapter ~~[section]~~ commits an offense that is a Parks and Wildlife Code Class C misdemeanor. ~~[An offense under this section is punishable by a fine of not less than \$25 nor more than \$200.]~~

(h) A proclamation of the commission under this section applies to any person who:

(1) purchases oysters from the captain of a commercial oyster boat, the holder of a commercial oyster boat license, or a member of the crew of a commercial oyster boat;

(2) purchases oysters under Section 47.0091; and

(3) holds a shellfish certificate, as defined by Section 436.002, Health and Safety Code.

SECTION 7. Subchapter E, Chapter 76, Parks and Wildlife Code, is amended by adding Section 76.304 to read as follows:

Sec. 76.304. VESSEL MONITORING SYSTEM. (a) The commission by proclamation may establish a vessel monitoring system for commercial oyster boats.

(b) Before the commission issues a proclamation under Subsection (a), the department shall consult with commercial oyster boat license holders concerning establishment of a vessel monitoring system.

SECTION 8. Subchapter F, Chapter 76, Parks and Wildlife Code, is amended by adding Sections 76.405, 76.406, and 76.407 to read as follows:

Sec. 76.405. LICENSE BUYBACK PROGRAM. (a) The department shall implement a license buyback program for licenses issued under this subchapter as part of the oyster

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SECTION 8. Same as House version.

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license moratorium program established by this subchapter.

(b) The commission by rule shall establish criteria, using reasonable classifications, for the department's use in selecting licenses to be purchased. The department or executive director shall consult with the oyster license moratorium review board concerning establishment of the criteria.

(c) The department shall retire each license purchased under the license buyback program until the commission finds that management of the oyster fishery allows reissue of those licenses through auction or lottery.

(d) The department shall set aside an amount determined by commission rule that is at least 20 percent of the fees from licenses issued under this subchapter to be used only for the purpose of buying back commercial oyster boat licenses from willing license holders. That money shall be sent to the comptroller for deposit to the credit of the game, fish, and water safety account.

(e) The department may solicit and accept grants and donations of money or materials from private or public sources for the purpose of buying back licenses issued under this subchapter from willing license holders.

(f) Money to be used for the purpose of buying back licenses issued under this subchapter is not subject to Section 403.095, Government Code.

(g) The commission shall consider the social and economic viability of the oyster industry and input from the oyster license moratorium review board regarding the reissue of commercial oyster boat licenses through auction or lottery.

Sec. 76.406. PREVAILING AUTHORITY. A proclamation of the commission under this subchapter prevails over any conflicting provision of this chapter to the extent of the conflict.

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Sec. 76.407. REPORT TO LEGISLATURE. (a) Not later than November 1, 2020, the department shall report to the governor and each member of the legislature an overview of the administration and status of the oyster license buyback program, including the biological, sociological, and economic effects of the program.

(b) This section expires September 1, 2021.

SECTION 9. The Parks and Wildlife Commission shall adopt any rules required to implement Sections 76.405, 76.406, and 76.407, Parks and Wildlife Code, as added by this Act, not later than June 1, 2018.

SECTION 10. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2017.

(b) Sections 76.405, 76.406, and 76.407, Parks and Wildlife Code, as added by this Act, take effect June 1, 2018.

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SECTION 9. Same as House version.

SECTION 10. Same as House version.

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