

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 3391
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Government Organization
5/14/2009
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Legislature created the Texas Parks and Wildlife Department (TPWD) in 1963 to operate state parks and enforce fish and wildlife laws. TPWD's goals include: improving access to the outdoors; helping landowners improve wildlife habitat; increasing participation and enhancing the quality of hunting, fishing, boating, and outdoor recreation; and maintaining or improving water quantity and quality for fish and wildlife. TPWD is subject to the Sunset Act and will be abolished on September 1, 2009, unless continued by the legislature. As a result of its review of TPWD, the Sunset Advisory Commission recommended continuation of the agency and several statutory modifications that are contained in this legislation.

C.S.H.B. 3391 amends current law relating to the continuation and functions of the Texas Parks and Wildlife Department and changing the elements of an offense.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive director of the Texas Parks and Wildlife Department (TPWD) in SECTION 8 (Section 12.027, Parks and Wildlife Code) of this bill.

Rulemaking authority previously granted to the Texas Parks and Wildlife Commission (commission) is modified in SECTION 8 (Section 12.027, Parks and Wildlife Code) of this bill.

Rulemaking authority previously granted to TPWD is modified in SECTION 14 (Section 66.007, Parks and Wildlife Code) of this bill.

Rulemaking authority is expressly granted to TPWD in SECTION 14 (Section 66.007, Parks and Wildlife Code) of this bill.

Rulemaking authority is expressly granted to the commission in SECTION 16 (Section 92.001, Parks and Wildlife Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 11.0111, Parks and Wildlife Code, to provide that unless continued in existence as provided by that Chapter 325 (Sunset Law), Government Code, the Texas Parks and Wildlife Department (TPWD) is abolished September 1, 2021, rather than 2009.

SECTION 2. Amends Section 11.012(c), Parks and Wildlife Code, to require Texas Parks and Wildlife Commission (commission) members, rather than three commission members, to be members of the general public and meet the qualifications provided by Section 11.0121 (Qualifications), rather than by Section 11.0121 of this code.

SECTION 3. Amends Sections 11.0161(a), (b), (c), and (d), Parks and Wildlife Code, as follows:

- (a) Deletes existing text requiring the commission to prepare information of public interest describing the functions of the commission and describing the commission's procedures by which complaints are filed with and resolved by the commission.

(b) Requires TPWD to maintain a system to promptly and efficiently act on complaints, rather than file on each written complaint, filed with TPWD that TPWD has the authority to resolve. Requires TPWD to maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition. Deletes existing text requiring that the file include the name of the person who filed the complaint, the date the complaint is received by TPWD, the subject matter of the complaint, the name of each person contacted in relation to the complaint, a summary of the results of the review or investigation of the complaint, and an explanation of the reason the file was closed, if TPWD closed the file without taking action other than to investigate the complaint.

(c) Requires TPWD to make information available describing its procedures for complaint investigation and resolution. Deletes existing text requiring TPWD to provide to the person filing the complaint and to each person who is a subject of the complaint a copy of TPWD's policies and procedures relating to complaint investigation and resolution.

(d) Requires TPWD to periodically notify the complaint parties of the status of the complaint until final disposition. Deletes existing text requiring TPWD, at least quarterly until final disposition of the complaint, to notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

SECTION 4. Amends Subchapter B, Chapter 11, Parks and Wildlife Code, by adding Sections 11.0163, 11.0164, and 11.0174, as follows:

Sec. 11.0163. USE OF TECHNOLOGY. Requires the commission to implement a policy requiring TPWD to use appropriate technological solutions to improve TPWD's ability to perform its functions. Requires that the policy ensure that the public is able to interact with TPWD on the Internet.

Sec. 11.0164. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION PROCEDURES. (a) Requires the commission to develop and implement a policy to encourage the use of negotiated rulemaking procedures under Chapter 2008 (Negotiated Rulemaking), Government Code, for the adoption of TPWD rules; and appropriate alternative dispute resolution procedures under Chapter 2009 (Alternative Dispute Resolution for Use by Governmental Bodies), Government Code, to assist in the resolution of internal and external disputes under TPWDS's jurisdiction.

(b) Requires that TPWD's procedures relating to alternative dispute resolution conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) Requires the commission to designate a trained person to coordinate the implementation of the policy adopted under Subsection (a); serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and collect data concerning the effectiveness of those procedures, as implemented by TPWD.

Sec. 11.0174. INTERNAL AFFAIRS OFFICE. (a) Requires the executive director of TPWD (executive director) to establish the office of internal affairs.

(b) Provides that the office of internal affairs has original departmental jurisdiction over all investigation of cases alleging criminal conduct occurring on TPWD property, engaged in by on-duty TPWD employees, or engaged in by officers commissioned by TPWD performing off-duty work related to their official duties.

(c) Provides that office of internal affairs shall oversee and review, but need not conduct, all investigations under this section.

(d) Authorizes an investigation under this section to be initiated only by the executive director or the commission.

(e) Requires the executive director to appoint the head of the office of internal affairs. Provides that the head of the office of internal affairs serves until removed by the executive director.

(f) Requires the head of the office of internal affairs to report directly to the executive director regarding performance of and activities related to investigations, report to the executive director for administrative purposes, and provide the executive director or commission with information regarding investigations as appropriate.

(g) Requires the head of the office of internal affairs to present at each regularly scheduled commission meeting and at other appropriate times a summary of information relating to investigations conducted under this section that includes analysis of the number, type, and outcome of investigations, trends in the investigations, and any recommendations to avoid future complaints.

SECTION 5. Amends Section 11.035, Parks and Wildlife Code, by adding Subsection (c), to authorize TPWD to deposit to the credit of the state parks account all revenue, less allowable costs, from the following sources: private contributions, grants, and donations received for state parks-related purposes; and federal funds received for state parks-related purposes.

SECTION 6. Amends Section 11.037(b), Parks and Wildlife Code, to authorize, rather than require, TPWD to deposit in the state land and water conservation any, rather than all, revenue received from the federal government or any other source for the purpose of administering programs authorized under Sections 13.301 through 13.311 (relating to participation in federal programs) of this code.

SECTION 7. Amends Section 12.0011, Parks and Wildlife Code, by adding Subsections (c) and (d), as follows:

(c) Requires a local or state agency or private organization that receives a TPWD recommendation or informational comment under Subsection (b) (relating to certain TPWD resource protection activities) to respond to TPWD in writing concerning the recommendation or comment. Requires that a response include for each recommendation or comment provided by TPWD a description of any modification made to the proposed project, fish and wildlife resource decision, or water flow schedule resulting from the recommendation or comment; any other disposition of the recommendation or comment; and as applicable, any reason the agency or organization disagreed with or did not act on or incorporate the recommendation or comment.

(d) Provides that a response under Subsection (c) is required to be submitted to TPWD not later than the 90th day after the date the agency or organization makes a decision or takes other action related to the recommendation or informational comment provided by TPWD, and is public information under Chapter 552 (Public Information), Government Code.

SECTION 8. Amends Section 12.027, Parks and Wildlife Code, to authorize the commission or the executive director, if the commission or the executive director finds that there is an immediate danger to a species authorized to be regulated by TPWD, or that strict compliance with existing TPWD rules would in any way prevent, hinder, or delay necessary action in coping with a disaster declared by the governor, to adopt emergency rules as provided by Chapter 2001 (Administrative Procedure), Government Code.

SECTION 9. Amends Section 13.310(c), Parks and Wildlife Code, to require TPWD to deposit all funds received for the development of outdoor recreation resources in the state treasury to the credit of the state land and water conservation account, the Texas recreation and parks account, the large county and municipality recreation and parks account, or the state parks account.

SECTION 10. Amends Sections 24.002, 24.003, 24.006, 24.052, 24.053, 24.056, Parks and Wildlife Code, as follows:

Sec. 24.002. TEXAS RECREATION AND PARKS ACCOUNT. Authorizes money in the Texas recreation and parks account to be used only, rather than only as provided by this subchapter for grants to, for grants under this subchapter to a county or municipality with a population of less than 500,000; grants under this subchapter to any other political subdivision that is not a county or municipality; or planning for, and acquisition, operation, and development of, outdoor recreation and conservation resources of this state and the administrative expenses incident to the projects or programs authorized under Subchapter D (Participation in Federal Programs), Chapter 13 (Powers and Duties Concerning Parks and Other Recreational Areas).

Sec. 24.003. ACCOUNT REVENUE SOURCE; REVENUE DEDICATION. (a) Creates this subsection from existing text.

(b) Authorizes TPWD to deposit to the credit of the Texas recreation and parks account private contributions, grants, and donations received in connection with this subchapter or Subchapter D, Chapter 13; and federal funds received in connection with this subchapter or Subchapter D, Chapter 13.

Sec. 24.006. FUNDS FOR GRANTS TO LOCAL GOVERNMENTS. Requires that an amount not less than 15 percent, when state revenues to the Texas recreation and parks account exceed \$14 million per year, be made available for grants to local governments for up to 50 percent of the cost acquisition or development of indoor public recreation facilities for indoor recreation programs, sports activities, nature programs, or exhibits.

Sec. 24.052. LARGE COUNTY AND MUNICIPALITY RECREATION AND PARKS ACCOUNT. Authorizes money in the large county and municipality recreation and parks account to be used only as provided by this subchapter or Subchapter D, Chapter 13.

Sec. 24.053. ACCOUNT REVENUE SOURCE; DEDICATION. (a) Creates this subsection from existing text.

(b) Authorizes TPWD to deposit to the credit of the large county and municipality recreation and parks account private contributions, grants, and donations received in connection with this subchapter or Subchapter D, Chapter 13; and federal funds received in connection with this subchapter or Subchapter D, Chapter 13.

Sec. 24.056. FUNDS FOR GRANTS TO LARGE COUNTIES AND MUNICIPALITIES. Makes a conforming change.

SECTION 11. Amends Section 43.071(5), Parks and Wildlife Code, to redefine "pen-reared birds."

SECTION 12. Amends Section 62.021(c), Parks and Wildlife Code, to provide that this section does not prohibit the sale of the following inedible parts: an inedible part, including the feathers, bones, or feet, of a game bird other than a migratory game bird that was lawfully taken or is lawfully possessed; the hair, hide, antlers, bones, horns, skull, hooves, or sinew, as applicable, of a deer, pronghorn antelope, desert bighorn sheep, collared peccary or javelina, red squirrel, or gray squirrel; or the feathers of a migratory game bird in accordance with federal law.

SECTION 13. Amends Section 64.002(b), Parks and Wildlife Code, to authorize certain birds to be killed at any time in any manner and their nests or eggs to be destroyed, and such conduct does not constitute an offense under Chapter 42 (Disorderly Conduct and Related Offenses), Penal Code.

SECTION 14. Amends Section 66.007, Parks and Wildlife Code, by amending Subsections (b), (c), and (e) and adding Subsections (m) through (s), as follows:

(b) Requires TPWD to publish a list of exotic fish and exotic shellfish, rather than exotic fish, shellfish, and aquatic plants, for which a permit under Subsection (a), rather than Subsection (a) of this section, is required; and exotic aquatic plants, as provided by this section, that are approved for importation into or possession in this state without a permit.

(c) Requires TPWD, 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) Redefines "exotic aquatic plant" and defines "approved list," "exotic fish," and "exotic shellfish."

(m) Prohibits a person from importing into or possessing in this state an exotic aquatic plant unless the plant is on the approved list or the person has an exotic species permit issued by TPWD.

(n) Requires TPWD, in compiling the approved list, to develop a process to evaluate the potential harm that may be caused by the importation or possession of exotic aquatic plant species by the importation or possession of exotic aquatic plant species into this state. Requires that the process include the use of a risk assessment model to help determine the potential harm of a species due to the aquatic environment, published scientific research findings, findings from regulatory agencies, or scientific analysis from third-party laboratories.

(o) Requires that the approved list include an exotic aquatic plant that is widespread in this state; and is not, as determined by TPWD, a cause of environmental, economic, or health problems.

(p) Requires TPWD to develop an expedited process for obtaining approval for inclusion on the approved list of a previously unknown exotic plant. Authorizes the commission to remove an exotic aquatic plant from the approved list if the results of further analysis conducted under Subsection (n) indicate that the plant should not be on the list. Authorizes TPWD to enact an emergency rule as provided by Chapter 2001, Government Code, to remove an exotic aquatic plant from the approved list if the plant is determined to cause environmental, economic, or health problems.

(q) Requires the commission to exercise final approval for the inclusion of each plant on the approved list.

(r) Authorizes TPWD, in accordance with commission rules, to issue an exotic species permit to a permit applicant for an exotic aquatic plant not on the approved list if the proposed use of the plant is as an experimental organism in a medical or other scientific research program approved by TPWD; as part of an exhibit approved by TPWD in a public aquarium or public zoo; or for an appropriate use that will not result in potential environmental, economic, or health problems.

(s) Provides that nothing in this subchapter regarding exotic aquatic plants restricts TPWD's authority under this code regarding exotic harmful or potentially harmful fish or shellfish.

SECTION 15. Amends Section 66.0071, Parks and Wildlife Code, to require 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 not included on the approved list, rather than any harmful or potentially harmful aquatic plant included on the list, published under Section 66.007(b)(2) (relating to a list of exotic aquatic plants that meet certain requirements) that is clinging or attached to the persons vessel or watercraft; or trailer, motor vehicle, or other mobile device used to transport or launch a vessel or watercraft.

SECTION 16. Amends Title 6, Parks and Wildlife Code, by adding Chapter 92, as follows:

CHAPTER 92. INTERSTATE WILDLIFE VIOLATOR COMPACT

Sec. 92.001. MEMBERSHIP IN INTERSTATE WILDLIFE VIOLATOR COMPACT.

(a) Authorizes the commission, on behalf of this state, to enter into the Interstate Wildlife Violator Compact.

(b) Authorizes the commission, if necessary to protect the interests of this state, to withdraw from the Interstate Wildlife Violator Compact in accordance with the terms of the compact.

(c) Authorizes the commission to take all actions necessary to implement this chapter, including the adoption of rules and the delegation of authority to the director.

SECTION 17. (a) Requires TPWD and the Texas Youth Commission jointly to seek representation by the attorney general to pursue a modification of the terms and purposes of the Parrie Haynes Trust.

(b) Provides that the legislature intends that a modification of the terms and purposes of the Parrie Haynes Trust be pursued so that TPWD may be designated as the state agency responsible for the trust, including all trust property and investments, and rights associated with the trust; control of the Parrie Haynes Ranch may be transferred to TPWD; and the purposes of the Parrie Haynes Trust may be appropriately expanded to include benefiting disadvantaged and other youths of this state.

(c) Provides that this section expires on the earlier of the date a court orders modification of the Parrie Haynes Trust in accordance with this section or September 1, 2021.

SECTION 18. Provides that the change in law made by this Act in the qualifications of the members of the commission does not affect the entitlement of a person serving as a member of the commission immediately before September 1, 2009, to continue to carry out the functions of the person's office for the remainder of the person's term. Provides that the change in law applies only to a person appointed on or after September 1, 2009. Provides that this Act does not prohibit a person who is a member of the commission immediately before September 1, 2009, from being reappointed as a commission member if the person has the qualifications required for the position under Chapter 11, Parks and Wildlife Code, as amended by this Act.

SECTION 19. Makes application of the change in law made by this Act to Section 11.0161, Parks and Wildlife Code, as amended by this Act, prospective to September 1, 2009.

SECTION 20. Makes application of Section 12.0011(c), Parks and Wildlife Code, as added by this Act, prospective to September 1, 2009.

SECTION 21. Provides that Section 62.021(c), Parks and Wildlife Code, as amended by this Act, applies to any sale of inedible parts of an animal or bird occurring on or after the effective date of this Act, regardless of the date the parts were acquired by the seller.

SECTION 22. (a) Requires TPWD, not later than December 31, 2010, to publish the initial list of approved exotic aquatic plants as provided by Section 66.007(b), Parks and Wildlife Code, as amended by this Act.

(b) Prohibits TPWD from enforcing the permit requirements or prohibited actions regarding exotic aquatic plants that are not on the approved list under Section 66.007(b), Parks and Wildlife Code, as amended by this Act, before the date on which the list is published.

(c) Requires TPWD to continue to publish a list of harmful or potentially harmful exotic aquatic plants for which a permit under Section 66.007(a), Parks and Wildlife Code, is required until the date on which the initial list of approved exotic aquatic plants is

published. Provides that TPWD is not required to maintain or publish the list of harmful or potentially harmful exotic aquatic plants after the date on which the list of approved exotic aquatic plants is published.

(d) Requires TPWD to continue to enforce Section 66.007, Parks and Wildlife Code, with regard to harmful or potentially harmful exotic plants that are included on the list for which a permit is required under that section as it existed immediately before the effective date of this Act, and that law is continued in effect until the date on which TPWD publishes the initial list of approved exotic aquatic plants.

(e) Makes application of Section 66.007, Parks and Wildlife Code, as amended by this Act, prospective. Provides that for purposes of this subsection, an offense is committed before the date on which the initial list of approved exotic aquatic plants is published if any element of the offense occurs before that date.

(f) Prohibits TPWD from enforcing the permit requirements or prohibited actions regarding exotic aquatic plants on the list of harmful or potentially harmful plants under Section 66.007, Parks and Wildlife Code, as that section existed before amendment by this Act, after the date on which the list of approved exotic plants is published.

(g) Provides that Section 66.0071, Parks and Wildlife Code, as amended by this Act, applies only to a person who takes a vessel or watercraft out of a public or private body of water in this state on or after the date TPWD publishes the initial list of approved exotic aquatic plants under Section 66.007(b), Parks and Wildlife Code, as amended by this Act. Provides that a person who takes a vessel or watercraft out of a public or private body of water in this state before the date the list of approved exotic aquatic plants is published is governed by the law in effect on the date the vessel or watercraft is taken out of the water, and the former law remains in effect for that purpose.

SECTION 23. Effective date: September 1, 2009.