

BILL ANALYSIS

Senate Research Center
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S.B. 1010
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Parks and Wildlife Department (TPWD) is the state's lead agency in protecting Texas' fish and wildlife resources and in providing outdoor recreation. TPWD is subject to the Sunset Act and will be abolished on September 1, 2009, unless continued by the legislature. The sunset review found that while Texas continues to need TPWD, TPWD's statute could be strengthened with regard to its oversight of invasive aquatic plants, assessing the impact of its fish and wildlife resource comments, internal affairs, out-of-state sportsmen, and use of the Parrie Haynes Ranch. TPWD currently licenses more than 2.2 million anglers and hunters, with a staff of 3,110 employees and a biennial budget of \$664.9 million.

As proposed, S.B. 1010 requires TPWD to evaluate the potential harm that may be caused by importation of exotic aquatic plants and requires TPWD to create a list of aquatic plants that are authorized to be imported and possessed within Texas without a permit. S.B. 1010 authorizes TPWD to issue permits for medical or scientific research and for public aquariums and zoos. The bill requires local or state agencies that receive recommendations or informational comments from TPWD on proposed projects or permits from TPWD to respond in writing to TPWD on the disposition of those comments and establishes TPWD's internal affairs office (office) in statute, providing that the office has original jurisdiction over crimes committed on TPWD property, or related to the duties of TPWD employees. The bill requires the office to report to the Parks and Wildlife Commission (commission) on recently closed cases, analysis of trends, and recommendations to avoid future complaints, and authorizes the commission to join the Interstate Wildlife Violator Compact. The bill instructs TPWD and the Texas Youth Commission to jointly seek representation by the attorney general to pursue a modification of the Parrie Haynes Ranch and Trust (trust) terms and purposes to designate TPWD as the state agency responsible for the trust. Finally, the bill provides that TPWD will be abolished on September 1, 2021.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Parks and Wildlife Department in SECTION 4 (Section 11.0164, Parks and Wildlife Code) of this bill.

Rulemaking authority is expressly granted to the Texas Parks and Wildlife Commission in SECTION 6 (Section 66.007, Parks and Wildlife Code) of this bill.

Rulemaking authority previously granted to the Texas Parks and Wildlife Department is modified in SECTION 6 (Section 66.007, 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 Chapter 325 (Sunset Law), 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 that Parks and Wildlife Commission members (commission), rather than three commission members, be members of the general public and meet the qualifications provided by Section 11.0121 (Qualifications), rather than of this code.

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

(a) Requires the commission to prepare information of public interest describing the functions of the commission. Requires the commission to make the information available to the general public and appropriate state agencies. Deletes existing text that requires the commission to prepare information of public interest 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 maintain a file on each written complaint, filed with TPWD that TPWD has the authority to resolve. Requires TPWD to maintain information about the 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 a file to include certain information relating to a complaint.

(c) Requires TPWD to make information available describing its procedures for complaint investigation and resolution. Deletes existing text that requires 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 periodically to notify the complaint parties of the status of the complaint until final disposition. Deletes existing text requiring TPWD, at least quarterly until the 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 TPWD's jurisdiction.

(b) Requires TPWD's procedures relating to alternative dispute resolution to 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 (office).

(b) Provides that the office has original departmental jurisdiction over all investigations of cases alleging criminal conduct occurring on TPWD property by on-duty TPWD employees or by officers commissioned by TPWD performing

off-duty work related to their official duties. Requires that the office oversee and review, but need not conduct, all investigations under this section.

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

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

(e) Requires the head of the office 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.

(f) Requires the head of the office 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 12.0011, Parks and Wildlife Code, by adding Subsections (c) and (d), as follows:

(c) Requires a local or state agency that receives a TPWD recommendation or informational comment under Subsection (b) 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 disagreed with or did not act on or incorporate the recommendation or comment.

(d) Provides that a response under Subsection (c) is public information under Chapter 552 (Public Information), Government Code.

SECTION 6. Amends Section 66.007, Parks and Wildlife Code, by amending Subsections (b), (c), and (e) and adding Subsections (m), (n), (o), (p), (q), and (r), as follows:

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

(c) Requires TPWD to make rules to carry out the provisions of this section. Requires that the rules that relate to exotic aquatic plants be as permissive as possible without allowing the importation of plants that pose environmental, economic, or health problems.

(e) Defines "approved list," "exotic fish," and "exotic shellfish." Redefines "exotic aquatic plant."

(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 as 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 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 to the aquatic environment, published scientific

research findings, findings from other regulatory agencies, or scientific analyses 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 economic, environmental, or health problems.

(p) Requires the commission to delegate to the executive director authority to develop an expedited process for obtaining approval for inclusion on the approved list of a previously unknown exotic aquatic 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.

(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 or as part of an exhibit approved by TPWD in a public aquarium or public zoo.

SECTION 7. 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, rather than harmful or potentially harmful, aquatic plant not included on the approved list published under Section 66.007(b) that is clinging or attached to the person's vessel or watercraft; or trailer, motor vehicle, or other mobile device used to transport or launch a vessel or watercraft.

SECTION 8. 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.

SECTION 9. (a) Requires TPWD and the Texas Youth Commission (TYC) to jointly seek representation by the attorney general to pursue 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 is authorized to be transferred to TPWD; and the purposes of the trust are authorized to 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 10. 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 Department), Parks and Wildlife Code, as amended by this Act.

SECTION 11. Makes application of Section 11.0161, Parks and Wildlife Code, as amended by this Act prospective.

SECTION 12. Makes application of Section 12.0011(c), Parks and Wildlife Code, as added by this Act prospective.

SECTION 13. (a) Requires TPWD, not later than September 1, 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 September 1, 2010.

(c) Requires TPWD to continue to publish a list of harmful or potentially harmful exotic aquatic plants for which, through August 31, 2010, a permit under Section 66.007(a), Parks and Wildlife Code, is required. Provides that TPWD is not required to maintain or publish that list after August 31, 2010.

(d) 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 the amendment by this Act, on or after September 1, 2010.

SECTION 14. Effective date: September 1, 2009.