

BILL ANALYSIS

Senate Research Center
83R1096 SGA-D

S.B. 820
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Agriculture, Rural Affairs & Homeland Security
3/21/2013
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 820 strengthens the current review, or appeal, process within Texas Parks and Wildlife Department (TPWD) in regard to deer permit revocation or non-renewal of permits and directs TPWD to develop certain criteria prior to deer euthanasia.

The deer breeding industry contributes millions of dollars to the Texas economy and is especially significant to rural communities. Deer breeders and others involved in deer management invest considerable money and time in their work.

The internal review process currently used by TPWD for denying or revoking a deer permit gives TPWD the authority to take such an action based on the allegations of wrong doing, rather than a conviction for a violation of the permit. This puts permit holders at risk of losing their permits, as well as their livelihoods, without an allegation being properly adjudicated by TPWD. Under current TPWD procedures, certain violations can result in a deer being destroyed without the permit holder having had the opportunity to request an appeal or provide proof of an animal's disease status, lineage, or other information. Such alleged violations result in deer being destroyed by TPWD officials without proper due process and determination of the violation.

S.B. 820 seeks to improve the review process by providing permit holders with certain due process rights. In addition, the bill seeks to prevent the unnecessary destruction of deer by allowing a deer breeder to conduct genetic testing to establish the lineage of unmarked deer, if such testing is completed in a timely manner, and by transferring decision-making authority for the destruction of deer from TPWD to the Texas Animal Health Commission.

This legislation amends current law to provide for a stronger appeal system through due process protections for the deer permit holder as well as requiring the development of standards and guidelines, including written notifications to the permit holder prior to disposition of deer identified as lacking proper documentation for identification and/or movement.

As proposed, S.B. 820 amends current law relating to the management, breeding, and destruction of deer and to procedures regarding certain deer permits.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Parks and Wildlife Commission in SECTION 4 (Section 12.605, Parks and Wildlife Code), SECTION 6 (Section 43.352, Parks and Wildlife Code), and SECTION 7 (Section 43.3661, Parks and Wildlife Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 12.501(b), Parks and Wildlife Code, as follows:

(b) Authorizes the executive director of the Texas Parks and Wildlife Department (TPWD) (director), except as provided by Subchapter G, to suspend or revoke an original or renewal permit or license issued under this code if it is found, after notice and hearing that, among other violations, the permittee or licensee made a false or misleading statement in connection with the permittee's or licensee's original or renewal application, rather than his original or renewal application, either in the formal application itself or in

any other written instrument relating to the application submitted to the Texas Parks and Wildlife Commission (commission) or its officers or employees.

SECTION 2. Amends Section 12.506, Parks and Wildlife Code, by adding Subsection (c), to provide that this section (Appeal From Suspension, Refusal, or Revocation of License or Permit) does not apply to a permit to which Subchapter G applies.

SECTION 3. Amends Section 12.508(b), Parks and Wildlife Code, to authorize TPWD, except as provided by Subchapter G, to refuse to issue or transfer an original or renewal license, permit, or tag under certain circumstances.

SECTION 4. Amends Chapter 12, Parks and Wildlife Code, by adding Subchapter G, as follows:

**SUBCHAPTER G. REFUSAL TO ISSUE OR RENEW CERTAIN PERMITS
RELATING TO THE CONTROL, BREEDING, OR MANAGEMENT OF DEER;
APPEAL OF CERTAIN DECISIONS**

Sec. 12.601. **APPLICABILITY OF SUBCHAPTER.** Provides that this subchapter applies only to the following permits:

- (1) a trap, transport, and transplant permit under Section 43.061 (Trapping, Transporting, and Transplanting Game Animals and Game Birds; Permit Required) or 43.0611 (Urban White-Tailed Deer Removal; Permit Required);
- (2) a trap, transport, and process permit under Section 43.0612 (Trapping and Transporting Surplus White-Tailed Deer; Permit Required);
- (3) a deer breeder's permit under Subchapter L (Deer Breeder's Permit), Chapter 43;
- (4) a white-tailed deer management permit under Subchapter R (White-Tailed Deer Management Permits), Chapter 43; and
- (5) a mule deer management permit under Subchapter R-1 (Mule Deer Management Permits), Chapter 43.

Sec. 12.602. **DEFINITIONS.** Defines "applicant," "final conviction," and "permittee" in this subchapter.

Sec. 12.603. **GENERAL CIRCUMSTANCES FOR REFUSAL TO ISSUE OR RENEW PERMIT.** Authorizes TPWD to refuse to issue or renew a permit if the applicant fails to submit in a timely manner a completed application on a form supplied by TPWD and all application materials required by TPWD, the required permit fee, accurate reports as applicable, and any additional information that TPWD determines is necessary to process the application.

Sec. 12.604. **REFUSAL TO ISSUE OR RENEW PERMIT BASED ON CERTAIN PENALTIES OR CONVICTIONS.** (a) Provides that this section applies only to a determination of whether to issue a permit to or renew a permit for an applicant who has a final conviction or has been assessed an administrative penalty for a violation of:

- (1) Subchapter C (Permits for Scientific Research, Zoological Collection, Rehabilitation, and Educational Display), E (Permits for Trapping, Transporting, and Transplanting Game Animals and Game Birds), L, R, or R-1, Chapter 43;
- (2) a provision of this code not described by Subdivision (1) that is punishable as a Class A or B Parks and Wildlife Code misdemeanor, a

Parks and Wildlife Code state jail felony, or a Parks and Wildlife Code felony;

(3) Section 63.002 (Possession of Live Game Animals); or

(4) the Lacey Act (16 U.S.C. Sections 3371-3378).

(b) Requires TPWD, in determining whether to issue a permit to or renew a permit for an applicant who has a final conviction or has been assessed an administrative penalty, to consider the number of convictions or administrative penalties and the seriousness of each conviction; the existence, number, and seriousness of offenses or violations other than offenses or violations that resulted in a final conviction or administrative penalty described by Subsection (a); the length of time between the most recent final conviction or administrative penalty and the permit application; whether the final conviction, administrative penalty, or other offense or violation was the result of negligence or intentional conduct; the applicant's efforts toward rehabilitation; the accuracy of the permit history information provided by the applicant; and other mitigating factors.

Sec. 12.605. PROCEDURE FOR REFUSAL TO ISSUE OR RENEW PERMIT. (a) Requires TPWD, not later than the 10th day after the date a decision to refuse to issue or renew a permit has been made, to provide to the applicant a written statement of the reasons for the decision.

(b) Requires the commission by rule to adopt procedures consistent with this subchapter for TPWD's review of a refusal to issue or renew a permit.

Sec. 12.606. REVIEW OF REFUSAL TO ISSUE OR RENEW PERMIT. Requires TPWD, in conducting a review of a decision by TPWD to refuse to issue or renew a permit, to consider:

(1) whether the conduct on which the refusal is based was negligent or intentional;

(2) for a refusal based on conduct that is a violation of a provision listed in Section 12.604(a), whether the applicant has a final conviction or has been assessed an administrative penalty based on the conduct;

(3) the seriousness of an offense or violation described by Subdivision (2) for which the applicant was finally convicted or assessed an administrative penalty;

(4) whether the conduct on which the refusal was based was committed or omitted by the applicant, an agent of the applicant, or both;

(5) for a renewal, whether the applicant agreed to any special conditions recommended by TPWD in lieu of a decision to refuse to issue or renew the expiring permit;

(6) whether there is a substantial likelihood that the applicant would repeat the conduct on which the refusal is based;

(7) whether the conduct on which the refusal is based involved a threat to public safety; and

(8) other mitigating factors.

Sec. 12.607. APPEAL OF DEPARTMENT DECISION TO REVOKE, SUSPEND, OR REFUSE PERMIT. (a) Provides that, except as provided by this section, the revocation or suspension of a permit is governed by Subchapter F.

(b) Provides that venue to appeal a decision of TPWD refusing to issue or renew a permit or revoking or suspending a permit is a district court in the county where the permitted facility, if applicable, is located; the county where the permittee resides; or Travis County.

(c) Requires that the appeal be by trial de novo.

SECTION 5. Amends Section 43.351, Parks and Wildlife Code, by adding Subdivision (8), to define "animal health commission" in this subchapter.

SECTION 6. Amends Section 43.352(b), Parks and Wildlife Code, as follows:

(b) Authorizes TPWD, at the option of the person applying for the issuance or renewal of a permit under this section (Permit Authorized; Duration of Permit), to issue a permit that is valid for one year, three years, or five years, rather than to issue a permit that is valid for longer than one year. Provides that a three-year or five-year permit is available only to a person who agrees to submit the annual reports required under this subchapter electronically. Authorizes the commission to adopt rules allowing TPWD to terminate a permit before the date originally specified for the permit issuance or renewal if the permit holder fails to submit the annual reports electronically as required for a three-year or five-year permit. Makes nonsubstantive changes.

SECTION 7. Amends Subchapter L, Chapter 43, Parks and Wildlife Code, by adding Sections 43.3591, 43.3661, 43.370, 43.371, and 43.372, as follows:

Sec. 43.3591. GENETIC TESTING. (a) Defines "DNA," "genetic test," and RNA in this section.

(b) Requires TPWD, after an inspection, to notify a deer breeder in writing when TPWD has reason to believe the deer breeder possesses deer that may pose a disease risk to other deer. Requires that the notice an explanation of the rationale used to establish the disease risk.

(c) Requires TPWD, if genetic testing is timely conducted, to postpone any actions that may be affected by the test results until the test results are available.

(d) Prohibits the results of genetic testing from being used as evidence to establish a defense against a fine imposed on a deer breeder found guilty of failure to keep records of all deer in a deer breeder facility as required by this subchapter.

Sec. 43.3661. RULES. Authorizes the commission to adopt rules as needed to implement this subchapter.

Sec. 43.370. DESTRUCTION OF DEER. (a) Authorizes deer held at a deer breeding facility, to control or prevent the spread of disease, to be destroyed only if:

(1) an agent of the Texas Animal Health Commission (TAHC) has conducted an epidemiological assessment;

(2) based on the assessment under Subdivision (1), the executive director of TAHC determines that the deer pose a threat to the health of other deer or other species, including humans; and

(3) the executive director of TAHC orders the destruction of the deer.

(b) Requires TAHC to provide written notification of an order to destroy deer to TPWD and the applicable deer breeder as provided by Section 43.371.

(c) Requires TPWD to carry out an order to destroy deer after notice has been provided to the applicable deer breeder. Requires that the destruction be conducted in the presence of and under the direction of TAHC officials.

Sec. 43.371. NOTICE OF DEER DESTRUCTION. (a) Requires TAHC to provide notice to a deer breeder before TPWD is authorized to destroy any of the deer held at the deer breeder's facility.

(b) Requires that a notice provided under this section be sent by certified mail to the last known address of the deer breeder and requires that the notice contain the date of destruction, which is prohibited from being sooner than the 10th day after the date of the notice; an explanation of any access restrictions imposed on the deer breeder's facility during the destruction of the deer; and an explanation of the reasons for the destruction.

Sec. 43.372. COST RECOVERY. Requires the deer breeder to pay to TPWD all costs associated with the epidemiological assessment and destruction of deer under this subchapter. Requires TPWD and TAHC to divide the payment to cover the costs incurred by each agency in carrying out their respective duties under this subchapter.

SECTION 8. Amends Subchapter R, Chapter 43, Parks and Wildlife Code, by adding Sections 43.6011, 43.608, 43.609, and 43.610, as follows:

Sec. 43.6011. DEFINITION. Defines "animal health commission" in this subchapter.

Sec. 43.608. DESTRUCTION OF DEER. (a) Authorizes deer on acreage covered by a permit issued under this subchapter, to control or prevent the spread of disease, to be destroyed only if:

- (1) an agent of TAHC has conducted an epidemiological assessment;
- (2) based on the assessment under Subdivision (1), the executive director of TAHC determines that the deer pose a threat to the health of other deer or other species, including humans; and
- (3) the executive director of TAHC orders the destruction of the deer.

(b) Requires TAHC to provide written notification of an order to destroy deer to TPWD and the applicable permit holder as provided by Section 43.609.

(c) Requires TPWD to carry out an order to destroy deer after notice has been provided to the applicable permit holder. Requires that the destruction be conducted in the presence of and under the direction of TAHC officials.

Sec. 43.609. NOTICE OF DEER DESTRUCTION. (a) Requires TAHC to provide notice to a permit holder before TPWD is authorized to destroy any of the deer covered by the permit.

(b) Requires that a notice provided under this section be sent by certified mail to the last known address of the permit holder and is required to contain the date of destruction, which is prohibited from being sooner than the 10th day after the date of the notice; an explanation of any access restrictions imposed on the acreage covered by the permit during the destruction of the deer; and an explanation of the reasons for the destruction.

Sec. 43.610. COST RECOVERY. Requires the permit holder to pay to TPWD all costs associated with the epidemiological assessment and destruction of deer under this subchapter. Requires TPWD and TAHC to divide the payment to cover the costs incurred by each agency in carrying out their respective duties under this subchapter.

SECTION 9. Amends Subchapter R-1, Chapter 43, Parks and Wildlife Code, by adding Sections 43.6211, 43.628, 43.629, and 43.630 , as follows:

Sec. 43.6211. DEFINITION. Defines "animal health commission" in this subchapter.

Sec. 43.628. DESTRUCTION OF DEER. (a) Authorizes deer on acreage covered by a permit issued under this subchapter, to control or prevent the spread of disease, to be destroyed only if:

- (1) an agent of TAHC has conducted an epidemiological assessment;
- (2) based on the assessment under Subdivision (1), the executive director of TAHC determines that the deer pose a threat to the health of other deer or other species, including humans; and
- (3) the executive director of TAHC orders the destruction of the deer.

(b) Requires TAHC to provide written notification of an order to destroy deer to TPWD and the applicable permit holder as provided by Section 43.629.

(c) Requires TPWD to carry out an order to destroy deer after notice has been provided to the applicable permit holder. Requires that the destruction be conducted in the presence of and under the direction of TAHC officials.

Sec. 43.629. NOTICE OF DEER DESTRUCTION. (a) Requires TAHC to provide notice to a permit holder before TPWD is authorized to destroy any of the deer covered by the permit.

(b) Requires that a notice provided under this section be sent by certified mail to the last known address of the permit holder and requires that the notice contain the date of destruction, which is prohibited from being sooner than the 10th day after the date of the notice; an explanation of any access restrictions imposed on the acreage covered by the permit during the destruction of the deer; and an explanation of the reasons for the destruction.

Sec. 43.630. COST RECOVERY. Requires the permit holder to pay to TPWD all costs associated with the epidemiological assessment and destruction of deer under this subchapter. Requires TPWD and TAHC to divide the payment to cover the costs incurred by each agency in carrying out their respective duties under this subchapter.

SECTION 10. (a) Makes application of Subchapter G, Chapter 12, Parks and Wildlife Code, as added by this Act, except as provided by Subsection (b) of this section, prospective.

(b) Makes application of Section 12.607, Parks and Wildlife Code, as added by this Act, prospective.

SECTION 11. Makes application of Section 43.3591(d), Parks and Wildlife Code, as added by this Act, prospective.

SECTION 12. Effective date: September 1, 2013.