February 28, 2011

Re: Opposition to H.B. 338

Dear Representatives of the Agriculture & Livestock Committee:

On behalf of the Texas Invasive Plant and Pest Council, we write in opposition to Texas H.B. 338. H.B.338 represents a great step backwards in Texas’s long and ongoing battle to prevent and limit the introduction and spread of noxious and invasive species. My reading of the language of H.B. 338 reveals that it undermines the validity of concerns about invasives expressed by other government agencies, Universities, and organizations; it is ambiguous on the definition of “invasive species”; and it would place an undue financial burden on organizations wishing to inform the public about noxious and invasive species.

The Texas Invasive Plant and Pest Council is a nonprofit organization that promotes the understanding and awareness of invasive plant and pest impacts in Texas; provide a forum for the exchange of scientific, educational and technical information; and support research and restoration activities that reduce impacts of invasive pests and plants in Texas.

The first example of ambiguity is:

Sec. 71.154. DISCLAIMER REQUIRED. (a) A public entity, other than the department, that produces a list of noxious or invasive terrestrial plant species growing in this state shall provide with the list a disclaimer that states: "THIS PLANT LIST IS ONLY A RECOMMENDATION AND HAS NO LEGAL EFFECT IN THE STATE OF TEXAS. THE TEXAS DEPARTMENT OF AGRICULTURE HAS SOLE AUTHORITY TO LABEL TERRESTRIAL PLANTS AS NOXIOUS OR INVASIVE."

The Texas Department of Agriculture (TDA) does have the authority to label terrestrial plants as noxious or invasive; however, they do not have the sole authority. The United States Department of Agriculture (USDA) under the Federal Plant Pest Act, Federal Noxious Weed Act, Plant Protection Act, Noxious Weed Control and Eradication Act and Federal Seed Act (7 U.S.C. 150aa et seq and 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3 and 7 U.S.C. 1551-1611 and 7 U.S.C. 2801 et seq) and Executive Order 13112 has legal authority to label a terrestrial plant as a noxious or invasive species. In addition, the TDA Noxious Plant List contains 31 species with 18 being considered terrestrial. For a state the size of Texas this list would require annual amendments to keep up with the introduction of invasive species. The TDA Noxious Plant List has been amended once in 2007, since its addition to the Texas Administrative Code in 2005. This creates a greater need to rely on the research of Universities and organizations. Ideally, legislation will look at more frequent modifications to the TDA Noxious Plant List; however, it seems ill-timed to introduce legislation that ties the hands of organizations geared towards educating the public on invasive species.
The second example of ambiguity is the definition of invasive species. The term “Invasive” as defined by the USDA is an alien species whose introduction does or is likely to cause economic or environmental harm or harm to human health. Multiple organizations and Universities (e.g. Texas A&M University, University of Texas, Sam Houston State University, Texas Invasive Plant and Pest Council, Native Plant Society of Texas, and Lady Bird Johnson Wildflower Center) are conducting research and studies on invasive plants. This H.B. will diminish the intellectual value of many publications, presentations and articles (that contain invasive lists) which are produced by experts in the field. This may impact the volume of invasive species research that is greatly needed in such an ecologically diverse state.

Another issue is the undue financial burden created by requiring organizations to print the disclaimer on all pamphlets, websites, billboards, radio productions, and television productions. The cost for putting the disclaimer on mass produced pamphlets or billboards can easily total thousands of dollars that will have to be paid for by organizations and the public.

If passed, the bill would place a financial burden on multiple organizations and diminish the intellectual value of research and publications on invasive species. We understand the need for developing a regulation that denotes the TDA’s list of noxious and invasive species as a legal list; however, it should not come at the detriment of Texas citizens. We would like to respectfully suggest that the H.B. 338 be tabled to refine the language or be voted down until new legislation is developed.

Sincerely,

Scott Walker
President of TIPPC