

BILL ANALYSIS

Senate Research Center

C.S.H.B. 3509
By: Bonnen, Dennis; Villalba (Seliger)
Natural Resources
5/16/2013
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Concerned parties have noted that the number of potential endangered species listings has risen significantly and that Texas will have to quickly evaluate more than 100 species and respond to those listings. The parties point out that the timeline for the listing process is approximately two years, but it may be rushed, extended, or ignored at the determination of the applicable deferral agency. In an effort to address these concerns and streamline the state's response to the federal Endangered Species Act of 1973, C.S.H.B. 3509 seeks to update and modernize applicable state law and to clarify state agency roles.

C.S.H.B. 3509 amends current law relating to endangered species habitat conservation and to the creation of a board to oversee and guide the state's coordinated response to federal actions regarding endangered species.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Coordinated State Endangered Species Governing Board in SECTION 5 (Section 83.105, Parks and Wildlife Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 83.005(b), Parks and Wildlife Code, to redefine "conservation agreement."

SECTION 2. Amends Section 83.011, Parks and Wildlife Code, by adding Subdivisions (1-a), (1-b), and (13) and amending Subdivision (4) (sic) to define "candidate conservation plan," "candidate species," and "governing board."

SECTION 3. Amends the heading to Section 83.013, Parks and Wildlife Code, to read as follows:

Sec. 83.013. AUTHORITY OF POLITICAL SUBDIVISION.

SECTION 4. Amends Sections 83.013(a) and (b), Parks and Wildlife Code, as follows:

(a) Authorizes a political subdivision, rather than the Texas Parks and Wildlife Department (TPWD) or a political subdivision, to participate in the study and preparation for and creation of a habitat conservation plan.

(b) Authorizes a political subdivision, rather than TPWD or a political subdivision, subject to this subchapter, to participate in the study and preparation for and creation of a regional habitat conservation plan.

SECTION 5. Amends Chapter 83, Parks and Wildlife Code, by adding Subchapters C and D, as follows:

SUBCHAPTER C. HABITAT CONSERVATION BY THE DEPARTMENT

Sec. 83.050. DEFINITIONS. Defines, notwithstanding the definitions contained in Subchapter B, when used in this chapter, “habitat conservation plan” and “state agency.”

Sec. 83.051. DEPARTMENT AND STATE AGENCY AUTHORITY. (a) Authorizes TPWD to:

(1) apply for and hold a federal permit issued in connection with a habitat conservation plan, candidate conservation plan, or similar plan, authorized or required by federal law in connection with a candidate species or endangered species, that is developed or coordinated by TPWD; or

(2) enter into an agreement with the United States Department of the Interior or other federal agency in connection with a habitat conservation plan, candidate conservation plan, or similar plan authorized or required by federal law in connection with a candidate species or endangered species.

(b) Authorizes a state agency to:

(1) apply for or hold a federal permit issued in connection with a habitat conservation plan, candidate conservation plan, or similar plan authorized or required by federal law in connection with a candidate species or endangered species; or

(c) Requires an agency that takes an action described by Subsection (b) to:

(1) cooperate with TPWD; and

(2) enter into an interagency contract that may provide for the payment of funds held by TPWD, or funds to which TPWD has access, for purposes of carrying out the action.

(d) Requires TPWD to provide the state’s scientific response to proposed listings as the state agency with authority for fish and wildlife management.

Sec. 83.052. PUBLIC NOTICE AND INPUT. (a) Requires TPWD or the state agency, before engaging in an activity authorized by Section 83.051, to:

(1) provide public notice; and

(2) solicit and consider comments from members of the task force on economic growth and endangered species created under Section 490E.003 (Creation), Government Code; affected landowners; conservation interests; and business interests affected by the activity.

(b) Authorizes the public notice required by this section to be made by:

(1) publication in the Texas Register;

(2) posting on TPWD's Internet website;

(3) written correspondence;

(4) announcement at a public meeting; or

(5) any means likely to ensure actual notice.

(c) Requires TPWD or state agency to create at least one advisory committee to assist TPWD or state agency in carrying out an activity authorized by Section 83.051(a) or (b). Requires the membership of an advisory committee created

under this subsection to be appointed so that one-third of the members are representatives of affected landowners or property owners.

(c-1) Requires that the composition of an advisory committee created under Subsection (c) provide the balance necessary to address economic, environmental, and policy issues related to the specific issue or action under consideration.

(d) Provides that Chapter 2110 (State Agency Advisory Committees), Government Code, does not apply to the size, composition, or duration of an advisory committee created under this section.

Sec. 83.053. HABITAT PROTECTION RESEARCH FUND. (a) Provides that the habitat protection research fund is held by the comptroller of public accounts of the State of Texas (comptroller) outside the treasury and consists of money appropriated to the fund, interest earned on the investment of money in the fund, and gifts and grants made to the fund.

(b) Authorizes money in the habitat protection research fund to be used only to:

(1) provide grants to institutions for research into candidate species and endangered species;

(2) employ research personnel dedicated to research described by Subdivision (1); and

(3) fund capital expenditures necessary to conduct research described by Subdivision (1).

(c) Requires that research grants described by Subsection (b) be awarded by the state agency.

(d) Provides that gifts to the fund can be used for other purposes besides research.

Sec. 83.054. CONFIDENTIAL INFORMATION. Provides that information collected under this subchapter by an agency, or an entity acting on the agency's behalf, from a private landowner or other participant or potential participant in a habitat conservation plan, proposed habitat conservation plan, candidate conservation plan, or proposed candidate conservation plan is confidential and exempt from disclosure under Chapter 552 (Public Information), Government Code, if the information relates to the specific location, species identification, or quantity of any animal or plant life for which a plan is under consideration or development or has been established under this subchapter.

SUBCHAPTER D. COORDINATED STATE ENDANGERED SPECIES GOVERNING BOARD

Sec. 83.101. BOARD COMPOSITION. Provides that the Coordinated State Endangered Species Governing Board (governing board) is composed of the following members or their designees:

(1) the commissioner of the Department of Agriculture;

(2) the commissioner of the General Land Office;

(3) the chair of the Railroad Commission of Texas;

(4) the comptroller;

(5) the executive director of TPWD;

(6) the executive director of the Texas A&M AgriLife Extension Service; and

(7) the executive director of the Texas Economic Development and Tourism Office.

Sec. 83.102. **PRESIDING OFFICER; SUPPORT STAFF.** (a) Provides that the position of chair of the governing board rotates among the statewide elected members specified in Section 83.101 regardless of who occupies the named office at the time of the rotation. Provides that the position of chair rotates every two years in the order listed in Section 83.101, beginning with the commissioner of the Department of Agriculture.

(b) Requires the chair, with the consent of other governing board members, to:

- (1) select the location of meetings of the governing board; and
- (2) set the agenda for meetings of the governing board.

(c) Requires agency staff of the chair of the governing board to provide support for the board.

Sec. 83.103. **MEETINGS.** (a) Requires the governing board to meet at least quarterly. Requires that notice of meetings be posted, and meetings be open to the public.

(b) Requires that information regarding the meetings of the governing board be posted on a website maintained by the comptroller that contains information about the economic impact of federal action on endangered species.

(c) Prohibits the governing board from meeting or making a decision unless a quorum is present.

(d) Requires the attorney general, notwithstanding Section 402.045 (Limitation), Government Code, the attorney general, at the request of the governing board, to provide legal advice to the governing board.

Sec. 83.104. **DUTIES OF GOVERNING BOARD.** Requires the governing board to:

(a) select the holder of a federal permit issued in connection with a habitat conservation plan, candidate conservation plan, or similar plan, authorized or required by federal law in connection with a candidate species or endangered species; and

(b) coordinate the response to listings and potential listings of endangered species in this state.

Sec. 83.105. **RULES.** Authorizes the governing board to adopt rules as necessary to implement administrative procedures of the board.

Sec. 83.106. **REPORT.** Requires the governing board, not later than December 1 of each even-numbered year, to submit to the governor, lieutenant governor, and speaker of the house of representatives and to the appropriate committees in each chamber of the legislature a report containing:

- (1) the board's findings and recommendations;
- (2) proposed legislation necessary to implement the purposes of the board;
- (3) a summary of the board's activities; and
- (4) any administrative recommendations proposed by the board.

Sec. 83.107. SCIENCE AND BIOLOGY WORKGROUP. Provides that the Science and Biology Workgroup will work under the direction of the governing board and is composed of the following members:

- (1) the state geologist of Texas, director of the Bureau of Economic Geology at the University of Texas at Austin;
- (2) a designee of the director of the Texas A&M AgriLife Extension Service with species expertise;
- (3) a designee from TPWD with science and biology expertise; and
- (4) any other persons the governing board deems appropriate who have science and biology expertise.

Sec. 803.108. SCIENCE AND BIOLOGY WORKGROUP PRESIDING OFFICER. Provides that the position of chair of the Science and Biology Workgroup rotates among the persons designated in Section 83.106(1), (2), and (3) regardless of who occupies the named office at the time of the rotation. Provides that the position of chair rotates every two years in the order listed in Section 83.106, beginning with the state geologist.

Sec. 83.109. PAYMENT TO UNIVERSITIES. Requires the comptroller to identify funds to reimburse state institutions of higher education for their science and biology research and work.

SECTION 6. Amends Section 403.452, Government Code, by adding Subsection (e) to require that funds to pay for the mitigation costs be held only by the comptroller.

SECTION 7. Amends Section 403.454, Government Code, as follows:

Sec. 403.454. CONFIDENTIAL INFORMATION. Provides that information collected under this subchapter by an agency, or an entity acting on the agency's behalf, from a private landowner or other participant or potential participant in a habitat conservation plan, candidate conservation plan, or proposed candidate conservation plan is confidential subject to Chapter 552, Government Code, rather than is not subject to Chapter 552, Government Code, and is prohibited from being disclosed to any person, including a state or federal agency, if the information relates to the specific location, species identification, or quantity of any animal or plant life for which a plan is under consideration or development or has been established under this subchapter. Authorizes the agency to disclose information described by this section only to the person who provided the information unless the person consents in writing to full or specified partial disclosure of the information.

SECTION 8. Amends Section 490E.004(a), Government Code, as follows:

(a) Authorizes the task force on economic growth and endangered species (task force) to assess the economic impact on the state of federal, state, or local regulations relating to endangered species. Deletes existing text authorizing the task force to assist landowners and other persons in this state to identify, evaluate, and implement cost-efficient strategies for mitigation of impacts to and recovery of endangered species that will promote economic growth and development in this state; and facilitate state and local governmental efforts to effectively implement endangered species regulations in a cost-efficient manner.

SECTION 9. Repealers: Sections 490E.001 (Purpose), 490E.004(b) (relating to the task force providing recommendations, on request by a local government or state official, relating to cost effective efforts to address endangered species issues), 490E.005 (Advisory Committees), and 490E.006 (Coordination With Other Entities), Government Code.

(e) Provides that Subchapter Q (Support for Habitat Protection Measures), Chapter 403, Government Code, expires September 1, 2015.

SECTION 10. Provides that any mitigation lands will be identified by the governing board. Provides that mitigation costs will be based on the reimbursement by affected parties at the lowest cost of the acquisition of the mitigation land.

SECTION 11. Requires the governing board, in collaboration with three members of the House State Affairs Committee appointed by the speaker of the house and three members of the Senate Natural Resources Committee appointed by the lieutenant governor, one stakeholder representing landowner interests appointed by the speaker of the house and one stakeholder representing landowner interests appointed by the lieutenant governor, to conduct a study to determine state policies to defend against the overreaching inclusion of species of the Endangered Species List by the United States Fish and Wildlife Service. Requires the governing board to submit a report regarding the study to the governor, lieutenant governor, speaker, and members of the legislature not later than December 1, 2014.

SECTION 12. Makes application of the changes in law made by Section 83.051(b), Parks and Wildlife Code, as added by this Act, prospective.

SECTION 13. Effective date: upon passage or September 1, 2013.