

1-1 By: Bonnen of Brazoria, Villalba H.B. No. 3509  
 1-2 (Senate Sponsor - Seliger)  
 1-3 (In the Senate - Received from the House May 13, 2013;  
 1-4 May 15, 2013, read first time and referred to Committee on Natural  
 1-5 Resources; May 20, 2013, reported adversely, with favorable  
 1-6 Committee Substitute by the following vote: Yeas 8, Nays 0;  
 1-7 May 20, 2013, sent to printer.)

1-8 COMMITTEE VOTE

1-9	Yea	Nay	Absent	PNV
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15			X	
1-16			X	
1-17	X			
1-18			X	
1-19	X			
1-20	X			

1-21 COMMITTEE SUBSTITUTE FOR H.B. No. 3509 By: Seliger

1-22 A BILL TO BE ENTITLED  
 1-23 AN ACT

1-24 relating to endangered species habitat conservation and to the  
 1-25 creation of a board to oversee and guide the state's coordinated  
 1-26 response to federal actions regarding endangered species.

1-27 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-28 SECTION 1. Section 83.005(b), Parks and Wildlife Code, is  
 1-29 amended to read as follows:

1-30 (b) In this section, "conservation agreement" includes an  
 1-31 agreement between [~~the state or~~] a political subdivision of the  
 1-32 state and the United States Department of the Interior under the  
 1-33 federal act that does not relate to a federal permit as defined by  
 1-34 Section 83.011.

1-35 SECTION 2. Section 83.011, Parks and Wildlife Code, is  
 1-36 amended by adding Subdivisions (1-a), (1-b), and (13) and amending  
 1-37 Subdivision (4) to read as follows:

1-38 (1-a) "Candidate conservation plan" means a plan to  
 1-39 implement actions necessary for the conservation of one or more  
 1-40 candidate species or species likely to become a candidate species  
 1-41 in the near future.

1-42 (1-b) "Candidate species" means a species identified by  
 1-43 the United States Department of the Interior as appropriate for  
 1-44 listing as threatened or endangered.

1-45 (13) "Governing Board" means the Coordinated State  
 1-46 Endangered Species Governing Board established under Subchapter D.

1-47 SECTION 3. The heading to Section 83.013, Parks and  
 1-48 Wildlife Code, is amended to read as follows:

1-49 Sec. 83.013. AUTHORITY OF [~~DEPARTMENT OR~~] POLITICAL  
 1-50 SUBDIVISION.

1-51 SECTION 4. Sections 83.013(a) and (b), Parks and Wildlife  
 1-52 Code, are amended to read as follows:

1-53 (a) A [~~The department or a~~] political subdivision may  
 1-54 participate in the study and preparation for and creation of a  
 1-55 habitat conservation plan.

1-56 (b) Subject to this subchapter, [~~the department or~~] a  
 1-57 political subdivision may participate in the study and preparation  
 1-58 for and creation of a regional habitat conservation plan.

1-59 SECTION 5. Chapter 83, Parks and Wildlife Code, is amended  
 1-60 by adding Subchapters C and D to read as follows:

SUBCHAPTER C. HABITAT CONSERVATION BY THE DEPARTMENT

Sec. 83.050. DEFINITIONS. Notwithstanding the definitions contained in Subchapter B, the following words and terms, when used in this subchapter, shall have the following meanings:

(1) "Habitat conservation plan" means a plan or program to protect endangered species by habitat preserves or other protection strategies developed in order to obtain a federal permit."

(2) "State agency" means state officer, board, commission, or department with statewide jurisdiction, excluding an institution of higher education.

Sec. 83.051. DEPARTMENT AND STATE AGENCY AUTHORITY. (a) The department may:

(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 the department; 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) A state agency may:

(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) An agency that takes an action described by Subsection (b) must:

(1) cooperate with the department; and

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

(d) The Department shall 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) Before engaging in an activity authorized by Section 83.051, the department or state agency shall:

(1) provide public notice; and

(2) solicit and consider comments from:

(A) members of the task force on economic growth and endangered species created under Section 490E.003, Government Code;

(B) affected landowners;

(C) conservation interests; and

(D) business interests affected by the activity.

(b) The public notice required by this section may be made by:

(1) publication in the Texas Register;

(2) posting on the department's Internet website;

(3) written correspondence;

(4) announcement at a public meeting; or

(5) any means likely to ensure actual notice.

(c) The department or state agency shall create at least one advisory committee to assist the department or state agency in carrying out an activity authorized by Section 83.051(a) or (b). The membership of an advisory committee created under this subsection must be appointed so that one-third of the members are representatives of affected landowners or property owners.

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

(d) Chapter 2110, Government Code, does not apply to the size, composition, or duration of an advisory committee created

3-1 under this section.

3-2 Sec. 83.053. HABITAT PROTECTION RESEARCH FUND. (a) The  
 3-3 habitat protection research fund is held by the comptroller outside  
 3-4 the treasury and consists of money appropriated to the fund,  
 3-5 interest earned on the investment of money in the fund, and gifts  
 3-6 and grants made to the fund.

3-7 (b) Money in the habitat protection research fund may be  
 3-8 used only to:

3-9 (1) provide grants to institutions for research into  
 3-10 candidate species and endangered species;

3-11 (2) employ research personnel dedicated to research  
 3-12 described by Subdivision (1); and

3-13 (3) fund capital expenditures necessary to conduct  
 3-14 research described by Subdivision (1).

3-15 (c) Research grants described by Subsection (b) shall be  
 3-16 awarded by the state agency.

3-17 (d) Gifts to the fund can be used for other purposes besides  
 3-18 research.

3-19 Sec. 83.054 CONFIDENTIAL INFORMATION. Information  
 3-20 collected under this subchapter by an agency, or an entity acting on  
 3-21 the agency's behalf, from a private landowner or other participant  
 3-22 or potential participant in a habitat conservation plan, proposed  
 3-23 habitat conservation plan, candidate conservation plan, or  
 3-24 proposed candidate conservation plan is confidential and exempt  
 3-25 from disclosure under Chapter 552 if the information relates to the  
 3-26 specific location, species identification, or quantity of any  
 3-27 animal or plant life for which a plan is under consideration or  
 3-28 development or has been established under this subchapter.

3-29 SUBCHAPTER D. COORDINATED STATE ENDANGERED SPECIES GOVERNING BOARD

3-30 Sec. 83.101. BOARD COMPOSITION. The Governing Board is  
 3-31 composed of the following members or their designees:

3-32 (1) the commissioner of the Department of Agriculture;

3-33 (2) the commissioner of the General Land Office;

3-34 (3) the chair of the Railroad Commission of Texas;

3-35 (4) the comptroller;

3-36 (5) the executive director of the Parks and Wildlife

3-37 Department;

3-38 (6) the director of the Texas A&M AgriLife Extension

3-39 Service; and

3-40 (7) the executive director of the Texas Economic

3-41 Development and Tourism Office.

3-42 Sec. 83.102. PRESIDING OFFICER; SUPPORT STAFF. (a) The  
 3-43 position of chair of the Governing Board rotates among the  
 3-44 statewide elected members specified in Section 83.101 regardless of  
 3-45 who occupies the named office at the time of the rotation. The  
 3-46 position of chair rotates every two years in the order listed in  
 3-47 Section 83.101, beginning with the commissioner of the Department  
 3-48 of Agriculture.

3-49 (b) The chair, with the consent of other Governing Board  
 3-50 members, shall:

3-51 (1) select the location of meetings of the Governing

3-52 Board; and

3-53 (2) set the agenda for meetings of the Governing

3-54 Board.

3-55 (c) Agency staff of the chair of the Governing Board shall  
 3-56 provide support for the board.

3-57 Sec. 83.103. MEETINGS. (a) The Governing Board shall meet  
 3-58 at least quarterly. Notice of meetings must be posted, and meetings  
 3-59 must be open to the public.

3-60 (b) Information regarding the meetings of the Governing  
 3-61 Board shall be posted on a website maintained by the comptroller  
 3-62 that contains information about the economic impact of federal  
 3-63 action on endangered species.

3-64 (c) The Governing Board may not meet or make a decision  
 3-65 unless a quorum is present.

3-66 (d) Notwithstanding Section 402.045, Government Code, the  
 3-67 attorney general, at the request of the Governing Board, shall  
 3-68 provide legal advice to the Governing Board.

3-69 Sec. 83.104. DUTIES OF GOVERNING BOARD. The Governing

4-1 Board shall:  
 4-2 (a) select the holder of a federal permit issued in  
 4-3 connection with a habitat conservation plan, candidate  
 4-4 conservation plan, or similar plan, authorized or required by  
 4-5 federal law in connection with a candidate species or endangered  
 4-6 species; and  
 4-7 (b) coordinate the response to listings and potential  
 4-8 listings of endangered species in this state.  
 4-9 Sec. 83.105. RULES. The Governing Board may adopt rules as  
 4-10 necessary to implement administrative procedures of the board.  
 4-11 Sec. 83.106. REPORT. Not later than December 1 of each  
 4-12 even-numbered year, the Governing Board shall submit to the  
 4-13 governor, lieutenant governor, and speaker of the house of  
 4-14 representatives and to the appropriate committees in each chamber  
 4-15 of the legislature a report containing:  
 4-16 (1) the board's findings and recommendations;  
 4-17 (2) proposed legislation necessary to implement the  
 4-18 purposes of the board;  
 4-19 (3) a summary of the board's activities; and  
 4-20 (4) any administrative recommendations proposed by  
 4-21 the board.  
 4-22 Sec. 83.107. SCIENCE AND BIOLOGY WORKGROUP. The Science  
 4-23 and Biology Workgroup will work under the direction of the  
 4-24 Governing Board and is composed of the following members:  
 4-25 (1) the State Geologist of Texas, director of the  
 4-26 Bureau of Economic Geology at the University of Texas at Austin;  
 4-27 (2) a designee of the director of the Texas A&M  
 4-28 AgriLife Extension Service with species expertise;  
 4-29 (3) a designee from the Parks & Wildlife Department  
 4-30 with science and biology expertise; and  
 4-31 (4) any other persons the Governing Board deems  
 4-32 appropriate who have science and biology expertise.  
 4-33 Sec. 803.108. SCIENCE AND BIOLOGY WORKGROUP PRESIDING  
 4-34 OFFICER. The position of chair of the Science and Biology Workgroup  
 4-35 rotates among the persons designated in Section 83.106 (1), (2),  
 4-36 and (3) regardless of who occupies the named office at the time of  
 4-37 the rotation. The position of chair rotates every two years in the  
 4-38 order listed in Section 83.106, beginning with the state geologist.  
 4-39 Sec. 83.109. PAYMENT TO UNIVERSITIES. The comptroller  
 4-40 shall identify funds to reimburse state institutions of higher  
 4-41 education for their science and biology research and work.  
 4-42 SECTION 6. Section 403.452, Government Code, is amended by  
 4-43 adding Subsection (e) to read as follows:  
 4-44 (e) Funds to pay for the mitigation costs shall be held only  
 4-45 by the comptroller.  
 4-46 SECTION 7. Section 403.454, Government Code, is amended as  
 4-47 follows:  
 4-48 CONFIDENTIAL INFORMATION. Information collected under this  
 4-49 subchapter by an agency, or an entity acting on the agency's behalf,  
 4-50 from a private landowner or other participant or potential  
 4-51 participant in a habitat conservation plan, proposed habitat  
 4-52 conservation plan, candidate conservation plan, or proposed  
 4-53 candidate conservation plan is confidential ~~not~~ subject to  
 4-54 Chapter 552 ~~and may not be disclosed to any person, including a~~  
 4-55 ~~state or federal agency~~, if the information relates to the  
 4-56 specific location, species identification, or quantity of any  
 4-57 animal or plant life for which a plan is under consideration or  
 4-58 development or has been established under this subchapter. The  
 4-59 agency may disclose information described by this section only to  
 4-60 the person who provided the information unless the person consents  
 4-61 in writing to full or specified partial disclosure of the  
 4-62 information.  
 4-63 SECTION 8. Section 490E.004(a), Government Code, is amended  
 4-64 to read as follows:  
 4-65 (a) The task force may~~+~~  
 4-66 ~~[(1)]~~ assess the economic impact on the state of  
 4-67 federal, state, or local regulations relating to endangered  
 4-68 species~~+~~  
 4-69 ~~[(2)] assist landowners and other persons in this state~~

5-1 ~~to identify, evaluate, and implement cost-efficient strategies for~~  
5-2 ~~mitigation of impacts to and recovery of endangered species that~~  
5-3 ~~will promote economic growth and development in this state, and~~  
5-4 ~~[(3) facilitate state and local governmental efforts~~  
5-5 ~~to effectively implement endangered species regulations in a~~  
5-6 ~~cost-efficient manner].~~

5-7 SECTION 9. (a) Section 490E.001, Government Code, is  
5-8 repealed;

5-9 (b) Section 490E.004(b), Government Code, is repealed;

5-10 (c) Section 490E.005, Government Code, is repealed;

5-11 (d) Section 490E.006, Government Code, is repealed; and

5-12 (e) Subchapter Q, Chapter 403, Government Code, expires  
5-13 September 1, 2015.

5-14 SECTION 10. Any mitigation lands will be identified by the  
5-15 Governing Board. Mitigation costs will be based on the  
5-16 reimbursement by affected parties at the lowest cost of the  
5-17 acquisition of the mitigation land.

5-18 SECTION 11. The Governing Board, in collaboration with  
5-19 three members of the House State Affairs Committee appointed by the  
5-20 Speaker of the House and three members of the Senate Natural  
5-21 Resources Committee appointed by the Lieutenant Governor, one  
5-22 stakeholder representing landowner interests appointed by the  
5-23 Speaker of the House and one stakeholder representing landowner  
5-24 interests appointed by the Lieutenant Governor, shall conduct a  
5-25 study to determine state policies to defend against the  
5-26 overreaching inclusion of species on the Endangered Species List by  
5-27 the United States Fish and Wildlife Service. The Governing Board  
5-28 shall submit a report regarding the study to the governor,  
5-29 lieutenant governor, speaker, and members of the legislature not  
5-30 later than December 1, 2014.

5-31 SECTION 12. The changes in law made by Section 83.051(b),  
5-32 Parks and Wildlife Code, as added by this Act, apply only to a  
5-33 federal permit issued, an application for a federal permit  
5-34 submitted, or a conservation agreement entered into on or after the  
5-35 effective date of this Act. A federal permit issued, an application  
5-36 for a federal permit submitted, or a conservation agreement entered  
5-37 into before the effective date of this Act is governed by the law in  
5-38 effect at the time the action was taken, and the former law is  
5-39 continued in effect for that purpose.

5-40 SECTION 13. This Act takes effect immediately if it  
5-41 receives a vote of two-thirds of all the members elected to each  
5-42 house, as provided by Section 39, Article III, Texas Constitution.  
5-43 If this Act does not receive the vote necessary for immediate  
5-44 effect, this Act takes effect September 1, 2013.

5-45 \* \* \* \* \*