

BILL ANALYSIS

C.S.H.B. 3509
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State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

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 federal 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.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Coordinated State Endangered Species Response Committee in SECTION 5 of this bill.

ANALYSIS

C.S.H.B. 3509 amends the Parks and Wildlife Code to authorize the Parks and Wildlife Department (TPWD) to 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 to enter into an agreement with the U.S. 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.

C.S.H.B. 3509 prohibits a state agency, other than an institution of higher education, unless authorized by TPWD, from applying for or holding 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 from entering into an agreement with the U.S. 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. The bill requires such an authorization to be documented by an interagency contract that may provide for the payment of funds held by TPWD, or funds to which TPWD has access, for the purposes of carrying out the habitat protection activity described in the authorization.

C.S.H.B. 3509 sets out provisions relating to public notice and input required before engaging in an authorized habitation conservation activity and requires TPWD to solicit and consider comments from specified parties before engaging in such activity. The bill authorizes TPWD to create advisory committees to assist in carrying out such activity. The bill makes statutory provisions relating to state agency advisory committees inapplicable to the size, composition, or duration of such an advisory committee.

C.S.H.B. 3509 establishes that the habitat protection research fund is held by the comptroller of public accounts 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. The bill limits the use of money in the habitat protection research fund to providing grants to institutions for research into candidate species and endangered species, employing research personnel at TPWD dedicated to such research, and funding capital expenditures by TPWD necessary to conduct such research. The bill requires such research grants to be awarded by TPWD.

C.S.H.B. 3509 creates the Coordinated State Endangered Species Response Committee composed of the attorney general, the commissioner of the Department of Agriculture, the commissioner of the General Land Office, the chair of the Railroad Commission of Texas, the comptroller, and the executive directors of TPWD and the Texas Economic Development and Tourism Office; establishes that the committee chair is a rotating position; and sets out provisions relating to committee meetings and support staff, meeting notices, and the specified Internet website posting of information regarding committee meetings. The bill requires the committee to oversee and guide the state's coordinated response to listings and potential listings of endangered species in Texas, including overseeing and guiding the state's official comments and positions in response to actions of the U.S. Fish and Wildlife Service. The bill authorizes the committee to adopt rules as necessary to implement administrative procedures of the committee and establishes the committee's reporting requirements.

C.S.H.B. 3509 amends the Government Code to remove provisions relating to the comptroller's authority to develop or coordinate the development of a habitat conservation plan or candidate conservation plan and to apply for a federal permit issued in connection with such plans and sets a September 1, 2013, expiration date on the comptroller's authority to enter into an agreement with the U.S. Department of the Interior for the implementation of a candidate conservation plan. The bill repeals provisions relating to the purpose of the task force on economic growth and endangered species, the authority of the task force to review state and local governmental efforts to address endangered species issues and make related recommendations, the comptroller's authority to create advisory committees to assist the task force, and coordination by the task force with other entities in performing its functions and duties.

C.S.H.B. 3509, in a provision setting out the functions and duties of the task force on economic growth and endangered species, removes a provision authorizing the task force to assist landowners and other persons in Texas 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 Texas and removes a provision authorizing the task force to facilitate state and local governmental efforts to effectively implement endangered species regulations in a cost-efficient manner. The bill repeals a provision establishing the purpose of the task force on economic growth and endangered species; a provision authorizing the task force to review, on request, state and local governmental efforts to address endangered species issues and provide recommendations to make those efforts more cost effective; a provision requiring the task force to work in coordination with the U.S. Fish and Wildlife Service, institutions of higher education, and agriculture and conservation organizations in performing its functions and duties; and a provision requiring The Texas A&M University System to assist in the analysis of certain impacts of proposed actions and to direct programs recommended by the task force.

C.S.H.B. 3509 repeals the following provisions of the Government Code:

- Section 490E.001
- Section 490E.004(b)
- Section 490E.005
- Section 490E.006

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

INTRODUCED

SECTION 1. Subsection (b), Section 83.005, Parks and Wildlife Code, is amended.

SECTION 2. Subdivision (4), Section 83.011, Parks and Wildlife Code, is amended to read as follows:

(4) "Federal permit" means a permit issued pursuant to the federal act, including a permit issued under Section 7 or 10(a) of the federal act.

No equivalent provision.

SECTION 3. Subsections (a) and (b), Section 83.013, Parks and Wildlife Code, are amended.

SECTION 4. Chapter 83, Parks and Wildlife Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. HABITAT PROTECTION BY THE DEPARTMENT.

Sec. 83.031. DEFINITIONS. In this subchapter:

(1) "Candidate conservation plan" means a plan to implement actions necessary for the

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Substantially the same as introduced version.

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

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

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

(4) "Federal permit" means a permit issued under ~~[Section 7 or 10(a) of]~~ the federal act, including Section 7 or 10(a) of the federal act.

(13) "Response committee" means the Coordinated State Endangered Species Response Committee established under Subchapter D.

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

Sec. 83.013. **AUTHORITY OF ~~[DEPARTMENT—OR]~~ POLITICAL SUBDIVISION.**

SECTION 4. Substantially the same as introduced version.

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

SUBCHAPTER C. HABITAT CONSERVATION BY THE DEPARTMENT.

No equivalent provision.

conservation of one or more candidate species or species likely to become a candidate species in the near future.

(2) "Candidate species" means a species identified by the United States Department of the Interior as appropriate for listing as threatened or endangered.

(3) "Endangered species" means a species listed by the United States Department of the Interior as endangered or threatened under the federal act.

(4) "Federal act" means the federal Endangered Species Act of 1973 (16 U.S.C. Section 1531 et seq.), as amended.

(5) "Federal permit" means a permit issued under the federal act, including Section 7 or 10(a) of the federal act.

Sec. 83.032. DEPARTMENT AUTHORITY.

Sec. 83.033. PUBLIC NOTICE AND INPUT.

Sec. 83.034. HABITAT PROTECTION RESEARCH FUND. (a) The habitat protection research fund is held by the 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.

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

(1) provide grants to institutions for research into candidate species and endangered species, as that term is defined under Section 403.451;

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

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

(c) Research grants described by Subsection (b) shall be awarded by the department.

No equivalent provision.

No equivalent provision.

Sec. 83.051. Substantially the same as introduced version.

Sec. 83.052. Substantially the same as introduced version.

Sec. 83.053. HABITAT PROTECTION RESEARCH FUND. (a) The habitat protection research fund is held by the 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) Money in the habitat protection research fund may be used only to:

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

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

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

(c) Research grants described by Subsection (b) shall be awarded by the department.

SUBCHAPTER D. COORDINATED STATE ENDANGERED SPECIES RESPONSE COMMITTEE

Sec. 83.101. COMMITTEE COMPOSITION. The Coordinated State Endangered Species Response Committee is composed of the following members:

(1) the attorney general;

(2) the commissioner of the Department of

Agriculture;

(3) the commissioner of the General Land Office;

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

(5) the comptroller;

(6) the executive director of the Parks and Wildlife Department; and

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

No equivalent provision.

Sec. 83.102. PRESIDING OFFICER; SUPPORT STAFF. (a) The position of chair of the response committee rotates among the members specified in Section 83.101 regardless of who occupies the named office at the time of the rotation. The position of chair rotates every two years in the order listed in Section 83.101, beginning with the attorney general.

(b) The chair, with the consent of other committee members, shall:

(1) select the location of meetings of the response committee; and

(2) set the agenda for meetings of the response committee.

(c) Agency staff of the chair of the response committee shall provide support for the committee.

No equivalent provision.

Sec. 83.103. MEETINGS. (a) The response committee shall meet at least monthly. Notice of meetings must be posted, and meetings must be open to the public.

(b) Information regarding the meetings of the response committee shall be posted on a website maintained by the comptroller that contains information about the economic impact of federal action on endangered species.

(c) The response committee may not meet or make a decision unless a quorum is present.

No equivalent provision.

Sec. 83.104. DUTIES OF RESPONSE COMMITTEE. The response committee shall oversee and guide the state's coordinated response to listings and potential listings of endangered species in this state, including overseeing and guiding the state's official comments and positions in response to actions of the United States Fish and Wildlife Service.

No equivalent provision.

Sec. 83.105. RULES. The response committee may adopt rules as necessary to implement administrative procedures of the response committee.

No equivalent provision.

Sec. 83.106. REPORT. Not later than December 1 of each even-numbered year, the response committee shall 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 response committee's findings and recommendations;
(2) proposed legislation necessary to implement the purposes of the response committee;
(3) a summary of the response committee's activities; and
(4) any administrative recommendations proposed by the response committee.

SECTION 5. Section 403.452, Government Code, is amended.

SECTION 6. Substantially the same as introduced version.

SECTION 6. Subsection (a), Section 403.453, Government Code, is amended to read as follows:

SECTION 7. Substantially the same as introduced version

(a) Upon consideration of the factors identified in Subsection (b), the comptroller may designate one of the following agencies to undertake the functions identified in Section 403.452(a)(1), (3), or (4) [~~403.452(a)(1), (2), (3), (5), or (6)~~]
(1) the Department of Agriculture;
(2) the Parks and Wildlife Department;
(3) the Texas Department of Transportation
(4) the State Soil and Water Conservation Board; or
(5) any agency receiving funds through Article VI (Natural Resources) of the 2012-2013 appropriations bill.

SECTION 7. Section 490E.004, Government Code, is amended to read as follows:

SECTION 8. Section 490E.004(a), Government Code, is amended to read as follows:

Sec. 490E.004. FUNCTIONS AND DUTIES.
[~~(a)~~] The task force may:
(1) assess the economic impact on the state of federal, state, or local regulations relating to endangered species; and
(2) [~~assist landowners and other persons in this state to identify, evaluate, and implement cost-efficient strategies for~~

(a) The task force may[~~:~~]:
[~~(1)~~] assess the economic impact on the state of federal, state, or local regulations relating to endangered species[~~;~~];
[~~(2)~~] ~~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~~

~~[(3) facilitate state and local governmental efforts to effectively implement endangered species regulations in a cost-efficient manner.]~~

~~[(b) If requested by a local government or state official, the task force may review state and local governmental efforts to address endangered species issues and provide recommendations to make those efforts more cost effective. The task force shall consider all available options as part of its recommendations. The options considered must include:~~

- ~~[(1) fee simple acquisition of land,~~
- ~~[(2) conservation easements,~~
- ~~[(3) use of land owned by local governments or this state,~~
- ~~[(4) recovery crediting, and~~
- ~~[(5) all relevant federal programs.]~~

SECTION 8. Section 490E.005, Government Code, is repealed.

SECTION 9. (a) The change in law made by Subsection (b), Section 83.032, Parks and Wildlife Code, as added by this Act, applies to a federal permit issued, an application for a federal permit submitted, or a conservation agreement entered into on or after the effective date of this Act.

(b) A federal permit issued, an application for a federal permit submitted, or a conservation agreement entered into before the effective date of this Act is governed by the law in effect at the time the action was taken, and that law is continued in effect for that purpose.

SECTION 10. This Act takes effect September 1, 2013.

~~mitigation of impacts to and recovery of endangered species that will promote economic growth and development in this state; and~~

~~[(3) facilitate state and local governmental efforts to effectively implement endangered species regulations in a cost-efficient manner].~~

No equivalent provision.

SECTION 9. The following provisions of the Government Code are repealed:

- (1) Section 490E.001;
- (2) Section 490E.004(b);
- (3) Section 490E.005; and
- (4) Section 490E.006.

SECTION 10. Substantially the same as introduced version

SECTION 11. Same as introduced version.