

**SUBJECT:** State coordination of endangered species conservation

**COMMITTEE:** State Affairs — committee substitute recommended

**VOTE:** 7 ayes — Cook, Craddick, Geren, Harless, Huberty, Oliveira, Smithee  
0 nays  
5 absent — Farrar, Frullo, Hilderbran, Menéndez, Sylvester Turner  
1 present, not voting — Giddings

**WITNESSES:** For — J. Roger Kelley, Continental Resources Inc.; Ben Shepperd, Permian Basin Petroleum Association; Bill Stevens, Texas Alliance of Energy Producers; (*Registered, but did not testify:* Teddy Carter, Texas Independent Producers and Royalty Owners Association; Stan Casey, Concho Resources Inc.; Chris Hosek, Linn Energy; Matthew Thompson, Apache Corp.; Matthew Thompson, Panhandle Producers and Royalty Owners)

Against — Gary Mowad; (*Registered, but did not testify:* Marida Favia del Core Borromeo, Exotic Wildlife Association; Bryan Gentsch, Texas Seed Trade Association; Barbara Harless, No. Tx. Citizens' Lobby; Debra Hastings, Texas Oil & Gas Association; Billy Howe, Texas Farm Bureau; Marissa Patton, Texas and Southwestern Cattle Raisers Association; Steve Perry, Chevron USA; Jim Reaves, Texas Nursery & Landscape Association; Corinne Smith, North Texas Citizens Lobby; Sara Tays, Exxon Mobil Corp.; Bob Turner, Texas Poultry Federation; Julie Williams, Chevron USA Inc.; Josh Winegarner, Texas Cattle Feeders Association)

On — (*Registered, but did not testify:* Whitney Blanton, Comptroller of Public Accounts; Tricia Davis, Texas Royalty Council; Clayton Wolf Texas Parks and Wildlife Department.)

**BACKGROUND:** In 2009, the 81st Legislature passed SB 2534, creating the Task Force on Economic Growth and Endangered Species chaired by the comptroller. In addition to the comptroller, the task force is comprised of the executive director of the Parks and Wildlife Department, the executive director of

the Texas Department of Transportation, and the executive director of the State and Soil and Water Conservation Board. State law requires that the task force, among other activities, assess the economic impact of endangered species on the state and assist landowners and local governments address those effects. The task force is chaired by the comptroller.

In 2011, the 82nd Legislature enacted SB 1 in its first called session, amending the Government Code to add Subchapter Q (secs. 403.451-403.555). The subchapter granted the Comptroller of Public Accounts the powers to support habitat protection planning for endangered species.

Under Government Code, sec. 403.452 the comptroller can: develop and coordinate the development of a habitat conservation plan or candidate conservation plan; apply to and hold federal permits issued in connection with habitat plans; enter into implementation agreements with the Department of Interior; establish a habitat protection fund to be held outside the treasury; impose mitigation fees; and implement, monitor, and support the implementation of a habitat conservation plan.

A habitat conservation plan allows for a broad-based plan approved by the U.S. Fish and Wildlife Service that allows incidental “take” of threatened or endangered species. “Take” refers to the removal of occupied endangered species habitat or species displacement due to development or disruption of habitat areas.

Government Code, sec. 403.451 defines “candidate conservation plan” as a “plan to implement such actions as necessary for the conservation or one or more candidate species or species likely to become a candidate species in the near future.” A candidate species is defined as a species identified by the U.S. Department of Interior as appropriate for listing as threatened or endangered.

**DIGEST:**

CSHB 3509 would amend the Parks and Wildlife Code, sec 83.011 to provide definitions for candidate conservation plan and candidate species.

The bill would grant TPWD the authority to apply for and hold a federal permit in connection with a habitat conservation plan, candidate conservation plan, or similar plan, that is authorized or required by federal law. TPWD also would be authorized to enter into an agreement with the federal government in connection with a habitat conservation plan,

candidate conservation plan, or similar plan.

CSHB 3509 would prohibit other state agencies – unless authorized by TPWD through interagency contract or an institution of higher education – from applying for a federal habitat conservation plan or similar plan permit or entering into an agreement with the federal government in connection with a habitat conservation plan or similar plans.

**TPWD habitat conversation plans.** Before undertaking the development of a habitat conservation plan or similar activity, TPWD would have to provide notice and solicit comments from members of the Task Force on Economic Growth and Endangered Species, affected landowners, conservation interests, and business interests affected by the activity.

CSHB 3509 would define notice to include publication in the Texas Register, posting on the department's website, announcement of public meetings, written correspondence, or other means likely to ensure notice.

TPWD could create advisory committees that were exempted from the size, composition, or duration requirements of Government Code, ch. 2110 governing advisory committees.

**Habitat Protection Research Fund.** CSHB 3509 would create the Habitat Protection Research Fund to be held by the comptroller outside the treasury to receive appropriations, grants, and gifts. Money in the fund could be used for grants for endangered species research, employing research personnel, and capital expenditures.

**Coordinated state committee.** The bill would create the Coordinated State Endangered Species Response Committee to oversee the state's coordinated response to the listing and potential listing of species. The committee would be composed of the attorney general, the commissioner of the Department of Agriculture, the commission of the General Land Office, the chair of the Railroad Commission, the comptroller, the executive director of the Parks and Wildlife Department, and the executive director of the Texas Economic Development and Tourism Office.

The chair of the committee would rotate among the members every two years. The chair would select the location of the meetings and set the agenda. Agency staff of the chair of the response committee would support the committee.

The committee would be required to meet monthly in public-noticed meetings. Information regarding the meetings would have to be posted on the website maintained by the comptroller and would contain information about the economic impact of the federal action on endangered species. The committee could adopt rules to implement administrative procedures.

Not later than December 1 of each even-number year, the committee would be required to submit a report to the state leadership and appropriate legislative committee chairs. The report would contain the committee's findings and recommendations, suggestions for proposed legislation, a summary of the committee's activities, and administrative recommendations.

CSHB 3509 would provide that the comptroller's ability to enter into an agreement with the U.S. Department of Interior for implementation of a conservation plan would expire on September 1, 2013. The bill would strike language from Government Code, sec. 403.452 to conform with the duties of the comptroller after September 1, 2013 as they related to endangered species. The bill would repeal Government Code, secs. 490E.001, 490E.004(b), 490E.005, and 490E.006.

The bill would provide that the authority granted to TPWD related to a federal habitat permit applied only to a permit issued, an application submitted, or a conservation agreement entered into after the effective date of the bill.

The bill would take effect September 1, 2013.

**SUPPORTERS  
SAY:**

CSHB 3509 would significantly enhance the state's ability to address endangered species issues. More than 100 species are expected to be listed as threatened or endangered in the state in the coming decade, and the state must develop a comprehensive ability to deal with the proposed listings.

The Texas Parks and Wildlife Department, as with other similar state wildlife agencies across the country, should be the state agency responsible for applying for and holding habitat conservation plan permits.

CSHB 3509 would increase the coordination of the state's endangered

species response by establishing the Endangered Species Response Committee comprised of statewide office holders, the executive director of TPWD and the executive director of the Texas Economic Development and Tourism Office. The committee's composition would ensure that a diverse array of economic and environmental interests were met.

While the comptroller's current effort to coordinate the state's endangered species response is laudable, it has failed to include the interests of many stakeholders.

The Office of the Comptroller is charged with tax enforcement, maintaining the state treasury, and conducting fiscal forecasts. An agency focused on accounting and state budgeting is ill-equipped to sustain the long-term effort to address endangered species issues. The permitting responsibility for endangered species should be vested in a department filled with experts in wildlife biology and the know-how to hire competent biologists and other professionals to support a prolonged endangered species response. TPWD and the Endangered Species Response Committee, with the participation of the comptroller, would better serve the state needs. The bill would maintain the Task Force on Economic Growth and Endangered Species, and the task force would remain under comptroller's guidance.

Keeping the state's endangered species response at the comptroller's office serves the interest of a narrow group of oil companies and gives little voice to a much larger group of interests that want to participate and contribute in the process.

**OPPONENTS  
SAY:**

The comptroller's office has been involved in addressing the economic effects of endangered species regulation since 2009 when the Task Force on Economic Growth and Endangered Species. The office has successfully helped lead the creation of a habitat conservation plan for the dunes sagebrush lizard that encompasses parts of West Texas and New Mexico. With the voluntary plan approved by Texas and New Mexico, the U.S. Fish and Wildlife Service determined in 2012 that the species did not need to be listed under the federal Endangered Species Act. The comptroller's office is best positioned to ensure that the needs of the Texas economy are at the forefront of the state's efforts to minimize the effects of the Endangered Species Act.

The bill would strip the Task Force on Economic Growth and Endangered

Species' ability to work with local communities on endangered species issues. It would remove the comptroller's ability to assist landowners and other persons in the state with identifying, evaluating, and implementing cost-effective ESA strategies; reviewing and providing recommendations to local governments; and creating advisory committees.

**OTHER  
OPPONENTS  
SAY:**

CSHB 3509 should be amended to include the Texas Commission on Environmental Quality (TCEQ) on the Coordinated State Endangered Species Response Committee. Many of the endangered species conflicts the state has had with the federal government have involved aquatic species, or species dependent on freshwater inflows such as whooping cranes and springs-dependent species. Although sometimes overlooked, TCEQ is responsible for issuing federal Clean Water Act, sec. 401 water quality certifications to applicants whose projects may impact water quality. This is a part of a larger wetlands permitting process regulated by the U.S. Army Corps of Engineers. TCEQ is responsible for two of the largest habitat restoration programs in the country — the Galveston Bay National Estuary Program and the Coastal Bend Bays & Estuaries Program. To leave TCEQ off the state's endangered species response committee, given that the agency has vast experience handling endangered species issues and is involved in a lawsuit over them, is a significant oversight.