

BILL ANALYSIS

Senate Research Center

S.B. 1136
By: Wentworth
Natural Resources
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As Filed

DIGEST

Currently, under the federal Endangered Species Act, when a landowner's property is home or could be home to an endangered species the landowner is prohibited from using that land for most purposes without first obtaining permission from the federal government. To obtain permission, the landowner must apply to the U.S. Fish and Wildlife Service (USFWS) for an "incidental take" permit known as a Section 10(a) permit. The application process, however, is complicated and prohibitively expensive for most landowners. When endangered species or their habitat affect a number of landowners, it can be beneficial for the landowners to work together to develop a habitat conservation plan which, if approved by the USFWS, will result in the granting of a regional Section 10(a) permit. The purpose of the regional permit is to make it easier and less expensive for each affected landowner to gain permission to use the land. This bill will provide regulations regarding the authority of a political subdivision to prepare and implement a regional habitat conservation plan or conservation agreement to protect federally listed endangered species.

PURPOSE

As proposed, S.B. 1136 provides regulations regarding the authority of a political subdivision to prepare and implement a regional habitat conservation plan or conservation agreement to protect federally listed endangered species.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 83, Parks and Wildlife Code, by designating Sections 83.001-83.004 as Subchapter A, and adding a heading to Subchapter A, as follows:

SUBCHAPTER A. FEDERAL-STATE AGREEMENTS

SECTION 2. Amends Chapter 83A, Parks and Wildlife Code, by adding Section 83.005, as follows:

Sec. 83.005. CONSERVATION AGREEMENTS FOR ENDANGERED SPECIES. Prohibits a political subdivision of the state from entering into a conservation agreement. Defines "conservation agreement."

SECTION 3. Amends Chapter 83, Parks and Wildlife Code, by adding Subchapter B, as follows:

SUBCHAPTER B. REGIONAL HABITAT CONSERVATION PLAN

Sec. 83.011. DEFINITIONS. Defines "biological advisory team," "endangered species," "federal act," "federal permit," "governmental entity," "habitat preserve," "harm," "mitigation fee," "plan participant," and "regional habitat conservation plan."

Sec. 83.012. PURPOSE. Provides that the purpose of this subchapter is to establish the requirements for and authority of a governmental entity to regulate wildlife through the development, financing, and implementation of a habitat conservation plan or similar plan

under a federal permit.

Sec. 83.013. APPLICATION AND IMPLEMENTATION. Sets forth regulations regarding application by a governmental entity for a federal permit and implementation of a regional conservation plan.

Sec. 83.014. LIMITATION OF POWERS; EXCLUSION OF LAND. Sets forth limitations on the powers of plan participants and governmental entities regarding a habitat preserve. Requires property to be excluded from the regional habitat conservation plan unless the owners make written request to be included in the regional habitat conservation plan if the property is under common ownership and lies both inside and outside the area subject to a regional habitat conservation plan.

Sec. 83.015. BIOLOGICAL REVIEW; CRITERIA. Requires a regional habitat conservation plan, including any mitigation fee; to be based on the proposed amount of harm to each endangered species to be protected under the regional habitat conservation plan. Requires the size of proposed habitat preserves to be based solely on the proposed amount of harm to the endangered species to be protected in the regional habitat conservation plan. Sets forth regulations regarding the appointment and duties of a biological advisory team. Requires a regional habitat conservation plan to be reviewed for compliance with this subchapter and to be approved by Texas Parks and Wildlife Commission (commission) before an application for a federal permit is submitted. Requires the commission to concur with the calculation of harm used in the regional habitat conservation plan.

Sec. 83.016. CITIZENS ADVISORY COMMITTEE. Sets forth the requirements for membership on a citizens advisory committee.

Sec. 83.017. DEVELOPMENT OF REGIONAL HABITAT CONSERVATION PLAN. Sets forth regulations regarding the development of a regional habitat conservation plan.

Sec. 83.018. PRESERVE ACQUISITION. Sets forth regulations regarding the acquisition of land for a habitat preserve.

Sec. 83.019. MUNICIPAL PARK SERVICES WITH EXISTING PLANS. Sets forth regulations regarding municipal park services for regional habitat conservation plans.

Sec. 83.020. NOTICE AND HEARING REQUIREMENTS. Sets forth notice and hearing requirements that must be met before the adoption of any regional habitat conservation plan, plan amendment, ordinance, budget, fee, schedule, rule, regulation, or order to implement this subchapter.

SECTION 4. Repealer: Section 83.006, Parks and Wildlife Code (Regional Plans for Endangered Species Protection).

SECTION 5. Emergency clause.
Effective date: upon passage.