

BILL ANALYSIS

Senate Research Center

C.S.S.B. 1136
By: Wentworth
Natural Resources
4-27-97
Committee Report (Substituted)

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, C.S.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 PROTECTION OF SPECIES. Requires any conservation agreement between a political subdivision of the state and the U.S. Department of the Interior to be developed in consultation with the Parks and Wildlife Department (department) and approved by the Parks and Wildlife Commission (commission). Defines "conservation agreement."

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

SUBCHAPTER B. HABITAT PROTECTION BY POLITICAL SUBDIVISIONS

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

Sec. 83.012. PURPOSE. Sets forth the purpose of this subchapter.

Sec. 83.013. AUTHORITY OF DEPARTMENT OR POLITICAL SUBDIVISION. Sets forth the authority of the department or a political subdivision regarding habitat conservation plans.

Sec. 83.014. LIMITATION OF POWERS; EXCLUSION AND INCLUSION OF LAND. Prohibits a governmental entity from imposing a regulation, rule, or ordinance related to endangered species unless the regulation, rule, or ordinance relates to the management of a habitat preserve owned by a plan participant. Sets forth regulations regarding the exclusion and inclusion of land in a regional habitat conservation plan. Sets forth limitations on the powers of a governmental entity.

Sec. 83.015. BIOLOGICAL REVIEW; CRITERIA. Requires a regional habitat conservation plan, including any mitigation fee; to be based on the 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 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 the 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 and the size and configuration of habitat preserve.

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. 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.

SUMMARY OF COMMITTEE CHANGES

SECTION 2.

Amends Section 83.005, Parks and Wildlife Code, to delete proposed text in Subsection (a), and to require certain conservation agreements to be developed in consultation with the department and be approved by the commission. Redefines "conservation agreement."

SECTION 3.

Amends the heading of Subchapter B to read "HABITAT PROTECTION BY POLITICAL SUBDIVISIONS."

Amends Section 83.011, Parks and Wildlife Code, to redefine "federal permit," "mitigation fee," "plan participant," and "regional habitat conservation plan." Defines "habitat conservation plan" and "land development standards."

Amends Section 83.012, Parks and Wildlife Code, to add provisions regarding the purpose of this subchapter.

Adds Section 83.013, Parks and Wildlife Code, regarding the authority of the department or political subdivisions.

Amends Section 83.014, Parks and Wildlife Code, to add provisions regarding limits on the powers of a governmental entity and the exclusion and inclusion of land in a regional habitat conservation plans.

Amends Section 83.015, Parks and Wildlife Code, to make nonsubstantive changes.

Amends Section 83.018, Parks and Wildlife Code, to add regulations regarding preserve acquisition.