

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 656
By: Huffman, Hegar
Government Organization
3/29/2011
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Coastal Coordination Council (council) is a 12-member interagency board that administers Texas' federally approved Coastal Management Program (program) and coordinates Texas' approach to managing its coastal resources in compliance with federal coastal management program requirements.

The Sunset Advisory Commission found that while the state clearly benefits from maintaining federal approval of its program, a separate council is no longer needed to administer it. Since staff from the General Land Office (GLO) and council-member agencies perform most of the program functions, the Sunset Advisory Commission determined GLO could more efficiently perform the council's limited duties.

C.S.S.B. 656 abolishes the council and assigns its functions to GLO. The council would be abolished on September 1, 2011.

C.S.S.B. 656 requires GLO to establish a Coastal Coordination Advisory Committee to assist with administration of the program. GLO would be required to ensure continued compliance with federal requirements by consulting with the National Oceanic Atmospheric Administration.

C.S.S.B. 656 requires the commissioner of the GLO (commissioner) to evaluate the permitting assistance group (group) functions, membership, and usefulness by assessing any pending initiatives and soliciting input from all members. This bill authorizes the commissioner to adopt rules to restructure or abolish the group, expand its functions, or add members.

C.S.S.B. 656 amends current law relating to the abolition of the Coastal Coordination Council and the transfer of its functions to the General Land Office.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Coastal Coordination Council is transferred to the commissioner of the General Land Office (commissioner) in SECTION 8 (Section 33.204, Natural Resources Code); SECTION 9 (Section 33.2041, Natural Resources Code); SECTION 11 (Section 33.205, Natural Resources Code); SECTION 13 (Section 33.2052, Natural Resources Code); SECTION 15 (Section 33.206, Natural Resources Code) of this bill.

Rulemaking authority is expressly granted to the commissioner in SECTION 9 (Section 33.2041, Natural Resources Code) and SECTION 11 (Section 33.205, Natural Resources Code) of this bill.

Rulemaking authority is expressly granted to the attorney general in SECTION 15 (Section 33.206, Natural Resources Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 201.026(g), Agriculture Code, to require the Texas State Soil and Water Conservation Board (SWCB), in an area that SWCB identifies as having or having the potential to develop agricultural or silvicultural nonpoint source water quality problems or an area within the "coastal zone" designated by the commissioner of the General Land Office

(commissioner), rather than the Coastal Coordination Council (council), to establish a water quality management plan certification program that provides, through local soil and water conservation districts, for the development, supervision, and monitoring of individual water quality management plans for agricultural and silvicultural lands.

SECTION 2. Amends Section 33.004, Natural Resources Code, by adding Subdivision (2-a), to define "committee."

SECTION 3. Amends Section 33.051, Natural Resources Code, as follows:

Sec. 33.051. GENERAL DUTY. Requires SWCB, the commissioner, the General Land Office (GLO), and the Texas Coastal Ocean Observation Network (network), rather than the SWCB, the council, GLO, and the network, to perform the duties provided in this subchapter.

SECTION 4. Amends Section 33.052(a), Natural Resources Code, as follows:

(a) Requires the commissioner to develop a continuing comprehensive coastal management program (program) pursuant to the policies stated in Section 33.202 (Policy). Deletes existing text providing that the program is not effective until approved by a majority of the council under Section 33.204 (Administration of Coastal Management Program) of this code. Makes a nonsubstantive change.

SECTION 5. Reenacts Section 33.052(b), Natural Resources Code, as amended by Chapters 165 (S.B. 971) and 416 (H.B. 3226), Acts of the 74th Legislature, Regular Session, 1995, and amends it as follows:

(b) Requires GLO, in developing the program, to act as the lead agency to coordinate and implement a comprehensive program, rather than develop a long-term plan, for the management of uses affecting coastal natural resource areas, in cooperation with other state agencies that have duties relating to coastal matters. Requires that the program implement the policies stated in Section 33.202 and include the elements listed in Section 33.053. Deletes text requiring GLO, in developing the program, to cooperate with those agencies represented on the council. Makes nonsubstantive changes.

SECTION 6. Amends Section 33.052(e), Natural Resources Code, to provide that this section does not add to or subtract from the duties and responsibilities of a state agency other than GLO, the commissioner, and SWCB, rather than GLO, the council, and SWCB.

SECTION 7. Amends Section 33.055, Natural Resources Code, as follows:

Sec. 33.055. PUBLIC HEARINGS TO CONSIDER COASTAL MANAGEMENT PROGRAM. Requires the commissioner, rather than the commissioner and the council, in developing, reviewing, or amending the program, after due notice to affected persons and the public generally, to hold or have held public hearings as the commissioner determines to be appropriate, rather than as the commissioner and the council determine to be appropriate.

SECTION 8. Amends Sections 33.204(a), (e), (f), and (g), Natural Resources Code, as follows:

(a) Requires the commissioner, rather than the council, by rule to adopt goals and policies of the program. Prohibits a goal or policy from requiring an agency or subdivision to perform an action that would exceed the constitutional or statutory authority of the agency or subdivision to which the goal or policy applies.

(e) Requires the commissioner, rather than the council, in conducting consistency reviews under Section 33.205 (Consistency with Coastal Management Program; Council Review), to receive and consider the oral or written testimony of any person regarding the program as the testimony relates to the agency or subdivision action or federal agency

action or activity or outer continental shelf plan under review. Makes conforming changes.

(f) Requires GLO, in coordination with other agencies and subdivisions, to prepare an annual report on the effectiveness of the program. Requires GLO, on or before January 15 of each odd-numbered year, to send to the legislature each of the previous two annual reports. Deletes existing text requiring GLO to assist the council in carrying out its duties. Deletes existing text prohibiting council members from receiving compensation for services but authorizing the council members to receive reimbursement for actual and necessary expenses. Deletes existing text requiring GLO to submit the report to the council for approval.

(g) Authorizes the commissioner to award grants to projects that further the goals and policies of the program, rather than authorizing the council to award grants to projects that further the goals and policies of the council. Requires the commissioner to establish the procedures for making any determination related to awarding a grant. Makes a conforming change.

SECTION 9. Amends Section 33.2041, Natural Resources Code, as follows:

Sec. 33.2041. New heading: COASTAL COORDINATION ADVISORY COMMITTEE. (a) Requires the commissioner by rule to establish the Coastal Conservation Advisory Committee (committee) to advise the commissioner on matters related to the program. Requires the committee, rather than the council, to consist of:

(1) a representative of each of the following entities designated by the presiding officer of that entity, rather than certain ex officio members:

(A) GLO;

(B) the Parks and Wildlife Department;

(C) the Texas Commission on Environmental Quality;

(D) the Railroad Commission of Texas;

(E) the Texas Water Development Board;

(F) the Texas Department of Transportation;

(G) SWCB; and

(H) the Texas Sea Grant College Program to serve as a nonvoting member; and

(2) the following members to be appointed by the commissioner, rather than the governor with the advice and consent of the senate to serve a two-year term:

(A) a city or county elected official who resides in the coastal area;

(B) an owner of a business located in the coastal area who resides in the coastal area;

(C) a resident from the coastal area; and

(D) a representative of agriculture.

Makes nonsubstantive and conforming changes.

(b) Requires the commissioner by rule to establish the terms of office for and duties of committee members. Deletes existing text relating to the terms of the positions on the council.

(c) Provides that Chapter 2110 (State Agency Advisory Committees), Government Code, does not apply to the size, composition, or duration of the committee. Deletes existing text requiring that appointments to the council be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

SECTION 10. Amends the heading to Section 33.205, Natural Resources Code, to read as follows:

Sec. 33.205. CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM;
COMMISSIONER REVIEW.

SECTION 11. Amends Section 33.205, Natural Resources Code, by amending Subsections (b), (c), (d), (e), (f), (g), and (h) and adding Subsections (f-1) and (f-2), as follows:

(b) Requires an agency or subdivision subject to the requirements of Subsection (a) (requiring an agency or subdivision that takes a certain agency or subdivision action that may adversely affect a coastal natural resource area to comply with the goals and policies of the coastal management program) to affirm that it has taken into account the goals and policies of the program by issuing a written determination that a proposed agency or subdivision action described by Section 33.2051 (Agency Rulemaking Action) or 33.2053 (Individual Agency or Subdivision Actions) is consistent with the program goals and policies.

(c) Prohibits the commissioner, rather than the council, from reviewing a proposed action subject to the requirements of Subsections (a) and (b) for consistency with the goals and policies of the program if:

(1) the consistency determination for the proposed action was contested by a member of the committee, rather than a council member, or an agency that was a party in a formal hearing under Chapter 2001 (Administrative Procedure), Government Code, or in an alternative dispute resolution process, or another person, rather than a council member or other person, by the filing of written comments with the agency before the action was proposed if the proposed action is one for which a formal hearing under Chapter 2001, Government Code, is not available; and

(2) a person described by Subdivision (1) files a request for referral alleging a significant unresolved dispute regarding the proposed action's consistency with the goals and policies of the program.

Deletes existing Subdivision (3) relating to three members of the council agreeing that there is an unresolved dispute regarding a proposed action. Makes nonsubstantive changes.

(d) Prohibits the commissioner, rather than the council, if consistency review thresholds are in effect under Section 33.2052, from reviewing a proposed action subject to the requirements of Subsections (a) and (b) for consistency with the goals and policies of the program unless the requirements of Subsection (c) are satisfied and:

(1) if the proposed action is one for which a formal hearing under Chapter 2001, Government Code, is available:

(A) the action exceeds the applicable thresholds and the agency's consistency determination was contested in a formal hearing or in an alternative dispute resolution process; or

(B) the action does not exceed the applicable thresholds but may directly and adversely affect a critical area, critical dune area, coastal park, wildlife management area or preserve, or gulf beach and a state agency contested the agency's consistency determination in a formal hearing; or

(2) if the proposed action is one for which a formal hearing under Chapter 2001, Government Code, is not available to contest the agency's determination, the action exceeds the applicable thresholds.

(e) Makes a conforming change.

(f) Requires the commissioner, rather than the council, by rule to establish a process by which an applicant for a permit or other proposed action described in Section 33.2053, or an agency or subdivision proposing an action, may request and receive a preliminary consistency review. Requires that the rules create a permitting assistance group composed of representatives of the committee member agencies, rather than council member agencies, and other interested committee members, rather than council members; and require that certain information set forth be produced by a certain date.

(f-1) Requires the commissioner, not later than January 1, 2012, to evaluate the functions, including any pending initiatives, membership, and usefulness of the permitting assistance group established under Subsection (f). Requires that the evaluation include input from all members of the permitting assistance group. Provides that this subsection expires April 1, 2012.

(f-2) Authorizes the commissioner to adopt rules as necessary to restructure or abolish the permitting assistance group, expand the functions of the permitting assistance group, or add members to the permitting assistance group.

(g) Requires the commissioner, rather than the council, by rule to establish a process by which an individual or small business may request and receive assistance with filing applications for permits or other proposed actions described by Section 33.2053. Requires that the rules provide for:

(1) the coordination of preapplication assistance through the permitting assistance group; and

(2) the provision of the following, by the permitting assistance group, to an individual or a small business, on request:

(A) a list of the permits or other approvals necessary for the project;

(B) a simple, understandable statement of all permit requirements;

(C) a coordinated schedule for each agency's or subdivision's decision on the action;

(D) a list of all the information the agencies or subdivisions need to declare the applications for the permits or other approvals administratively complete;

(E) assistance in completing the applications as needed; and

(F) if enough information is already available, a preliminary finding as to whether the project is likely to be found consistent with the goals and policies of the program.

(h) Makes a conforming change.

SECTION 12. Amends Section 33.2051(e), Natural Resources Code to prohibit the commissioner, rather than the council, from reviewing a proposed rule of the Department of Agriculture. Makes a nonsubstantive change.

SECTION 13. Amends Section 33.2052, Natural Resources Code, as follows:

Sec. 33.2052. CERTIFICATION OF AGENCY RULES; AGENCY ACTIONS CONSIDERED CONSISTENT. (a) Requires the commissioner, rather than the council, by rule to establish and authorizes the commissioner to modify a process by which an agency may submit rules and rule amendments described by Section 33.2051 to the commissioner, rather than the council, for review and certification for consistency with the goals and policies of the program.

(b) Makes conforming changes.

(c) Requires the commissioner, rather than the council, by rule to provide that the commissioner may revoke a certification, rather than its certification, under Subsection (b) (requiring that the process provide that an agency may submit consistency review thresholds for the agency's actions) if the commissioner finds that an agency has performed certain actions. Makes conforming changes.

SECTION 14. Amends Sections 33.2053(j) and (k), Natural Resources Code, as follows:

(j) Provides that an action to renew, amend, or modify an existing permit, certificate, lease, easement, approval, or other action is not an action under this section if the action is taken under a rule that the commissioner, rather than the council, has certified under Section 33.2052 and:

(1) for a wastewater discharge permit, if the action is not a major permit modification that would:

(A) increase pollutant loads to coastal waters; or

(B) result in relocation of an outfall to a critical area;

(2) for solid, hazardous, or nonhazardous waste permits, if the action is not a Class III modification under rules of the Texas Commission on Environmental Quality, rather than the Texas Natural Resource and Conservation Commission; or

(3) for any other action, if the action:

(A) only extends the period of the existing authorization and does not authorize new or additional work or activity; or

(B) is not directly relevant to Sections 33.205(a) and (b).

(k) Makes a conforming change.

SECTION 15. Amends Section 33.206, Natural Resources Code, as follows:

Sec. 33.206. New heading: ACTION BY COMMISSIONER OR ATTORNEY GENERAL. (a) Provides that a proposed action is consistent with the goals and policies of the program and approved by the commissioner unless the commissioner determines the action to be inconsistent with the program and protests the action, rather than providing that a proposed action is consistent with the goals and policies of the program and approved by the council unless, on the affirmative vote of at least two-thirds of the members of the council, the council determines the action to be inconsistent with the program and protests the action.

(b) Makes conforming changes.

(c) Makes conforming changes.

(d) Requires the commissioner, rather than the council, to adopt guidance and procedural rules for the review of federal actions, activities, and outer continental shelf plans that incorporate the provisions of federal regulations governing those reviews. Requires that the guidance and rules provide that the commissioner or any three members committee members, rather than the chair or any three members, may request additional information from a federal agency or additional time for review as provided by the federal regulations.

(e) Requires the commissioner, rather than the council, to review an action, rather than any federal action, activity, or outer continental shelf plan that any three committee members agree presents a significant unresolved issue regarding consistency with the goals and policies of the program. Deletes existing text requiring the council to place the matter on the agenda of a meeting of the council for review. Makes a conforming change.

(f) Deletes existing text authorizing the council, if an activity requiring an agency or subdivision action described by Section 33.2053 that falls below thresholds in effect under Section 33.2052 also requires an equivalent federal permit or license, to only determine the agency or subdivision action's consistency. Authorizes the commissioner, rather than the council, if an activity requiring an agency or subdivision action described by Section 33.2052 that falls above thresholds in effect under Section 33.2052 also requires an equivalent federal permit or license, to determine the consistency of the agency or subdivision action or the federal license or permit, but not both. Makes a conforming change.

(g) Prohibits the commissioner, notwithstanding the other provisions of this subchapter, from determining whether a proposed action of GLO, the commissioner, or SWCB is consistent with the goals and policies of the program. Requires the commissioner to refer a request for a review of the consistency of such an action to the attorney general not later than the second day after the date the commissioner receives the request. Requires the attorney general to determine whether the action is consistent with the goals and policies of the program in accordance with the applicable provisions of this subchapter governing determinations by the commissioner. Authorizes the attorney general, if the attorney general determines the action to be inconsistent with the goals and policies of the program, to protest the action in accordance with the provisions of this subchapter governing protests by the commissioner. Provides that a protest by the attorney general has the same effect as a protest by the commissioner. Authorizes the attorney general to adopt rules as necessary to implement this subsection. Deletes existing text authorizing the governor, with the assistance of chair of the council, if, after review, the council finds a proposed federal agency action or activity or outer continental shelf plan is inconsistent with the program, and the federal agency does not modify the action, activity, or outer continental shelf plan to achieve consistency with the program, to seek mediation of the matter in accordance with federal law.

Deletes existing Subsection (h) prohibiting the council from protesting a proposed action by an agency or subdivision pertaining to an application filed with that agency or subdivision before the date the program is adopted.

SECTION 16. Amends Section 33.207, Natural Resources Code, as follows:

Sec. 33.207. New heading: COMMISSIONER RECOMMENDATIONS. Provides that in addition to the report required by Section 33.206, the commissioner, rather than the council:

(1) is authorized to periodically submit recommendations to an agency or subdivision designed to encourage the agency or subdivision to carry out its functions in a manner consistent with the coastal management program, including recommendations for methods to simplify governmental procedures and changes in applicable rules or statutes; and

(2) is required to report to the legislature on:

(A) recommended statutory changes needed to make more effective and efficient use of public funds and provide for more effective and efficient management of coastal natural resource areas, including recommendations on methods to simplify governmental procedures;

(B) agency or subdivision actions that are not consistent with the coastal management program; and

(C) population growth of, infrastructure needs of, and use of resources on the coast.

SECTION 17. Amends Sections 33.208(b) and (c), Natural resources Code, as follows:

(b) Requires the attorney general, if the attorney general issues an opinion under Section 33.206(c) that a proposed agency or subdivision action is inconsistent with the program and the agency or subdivision fails to implement the commissioner's recommendation regarding the action, rather than the council's recommendation regarding the action, to file suit in a district court of Travis County to enforce this subchapter. Requires the court to consider the attorney general's opinion in determining whether the proposed action is consistent with the program.

(c) Authorizes the commissioner and the agency or subdivision, notwithstanding the request of an opinion from, or the filing of suit by, the attorney general to enter into a settlement agreement with regard to the proposed agency or subdivision action. Authorizes the commissioner to rescind the commissioner's request for an opinion from the attorney general, if the commissioner and the agency or subdivision enter in a settlement agreement. Makes conforming changes.

SECTION 18. Amends Section 33.209, Natural Resources Code, as follows:

Sec. 33.209. PROHIBITION ON SPECIAL AREA MANAGEMENT PLANS. Prohibits GLO, rather than the council, from developing or approving a special area management plan, including a plan for an area designated under the national estuary program.

SECTION 19. Repealer: Sections 33.004(13) (defining "council" as the Coastal Coordination Council), Natural Resources Code.

Repealer: Section 33.052(c) (authorizing the council to appoint and establish procedures for an advisory committee to advise the council and GLO on coastal management issues), Natural Resources Code.

Repealer: Section 33.203(20) (defining "council" as the Coastal Coordination Council), Natural Resources Code.

Repealer: Section 33.204(b) (requiring the council to meet twice each calendar year and as necessary to conduct the business of the council, and set aside time at each meeting for public comment), Natural Resources Code.

Repealer: Section 33.204(c) (authorizing the council to act on the agreement of a majority of a quorum of the council), Natural Resources Code.

Repealer: Section 33.204(d) (requiring the governor, for each matter to be reviewed by the council under Section 33.205(c) or (d) of this code, to designate a local elected official from a county or municipality directly affected by the matter under review), Natural Resources Code.

Repealer: Section 33.2042 (Eligibility of Council Members), Natural Resources Code.

Repealer: Section 33.2043 (Grounds for Removal), Natural Resources Code.

Repealer: Section 33.2044 (Standards of Conduct), Natural Resources Code.

Repealer: Section 33.2045 (Training), Natural Resources Code.

Repealer: Section 33.2053(g) (prohibiting the council from reviewing an action of the Texas Natural Resource Conservation Commission described by Subsections (f)(8) - (10) taken to implement a part of the Trans-Texas Water Program), Natural Resources Code.

Repealer: Section 33.211 (Sunset Provision), Natural Resources Code.

Repealer: Section 33.212 (Complaints), Natural Resources Code.

SECTION 20. (a) Provides that, effective September 1, 2011, the council is abolished and the powers and duties of the council are transferred to GLO in accordance with Chapter 33, Natural Resources Code, as amended by this Act.

(b) Requires the presiding officers of the appropriate entities, as soon as possible after the effective date of this Act, to appoint the members of the committee in accordance with Section 33.2041, Natural Resources Code, as amended by this Act.

(c) Provides that all rules of the council are continued in effect as rules of GLO until superseded by a rule of GLO. Provides that a certification issued by the council is continued in effect as provided by the law in effect immediately before the effective date of this Act. Provides that a complaint, investigation, contested case, or other proceeding pending on the effective date of this Act is continued without change in status after the effective date of this Act. Provides that an activity conducted by the council is considered to be an activity conducted by GLO.

(d) Provides that a reference in another law or an administrative rule to the council means GLO.

(e) Requires the commissioner, on September 1, 2011, or as soon as is possible after that date, to adopt a comprehensive plan to ensure the smooth transition of all programs operated by the council before September 1, 2011, from the council to GLO. Requires GLO, during the transition, to consult with the National Oceanic and Atmospheric Administration as necessary to ensure continued compliance with federal requirements and to maintain federal approval of the program.

(f) Requires that all money, records, property, and equipment in the possession of the council on September 1, 2012, be transferred to the possession of GLO on September 1, 2012, or as soon as possible after that date.

SECTION 21. Effective date: September 1, 2011.