

BILL ANALYSIS

Senate Research Center

H.B. 3509
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Natural Resources
5/16/2013
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

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 deferral agency. In an effort to address these concerns and streamline the state's response to the federal Endangered Species Act of 1973, H.B. 3509 seeks to update and modernize applicable state law and to clarify state agency roles.

H.B. 3509 amends current law relating to endangered species habitat conservation and to the creation of a committee to oversee and guide the state's coordinated response to federal actions regarding endangered species.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Coordinated State Endangered Species Response Committee in SECTION 5 (Section 83.105, Parks and Wildlife Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 83.005(b), Parks and Wildlife Code, to redefine "conservation agreement."

SECTION 2. Amends Section 83.011, Parks and Wildlife Code, by adding Subdivisions (1-a), (1-b), and (13) to define "candidate conservation plan," "candidate species," and "response committee," and amending Subdivision (4) to redefine "federal permit."

SECTION 3. Amends the heading to Section 83.013, Parks and Wildlife Code, to read as follows:

Sec. 83.013. AUTHORITY OF POLITICAL SUBDIVISION.

SECTION 4. Amends Sections 83.013(a) and (b), Parks and Wildlife Code, as follows:

(a) Authorizes a political subdivision, rather than the Texas Parks and Wildlife Department (TPWD) or a political subdivision, to participate in the study and preparation for and creation of a habitat conservation plan.

(b) Authorizes a political subdivision, rather than TPWD or a political subdivision, subject to this subchapter, to participate in the study and preparation for and creation of a regional habitat conservation plan.

SECTION 5. Amends Chapter 83, Parks and Wildlife Code, by adding Subchapters C and D, as follows:

SUBCHAPTER C. HABITAT CONSERVATION BY THE DEPARTMENT

Sec. 83.051. DEPARTMENT AND STATE AGENCY AUTHORITY. (a) Authorizes TPWD to:

(1) 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

(2) enter into an agreement with the United States 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.

(b) Authorizes a state agency to:

(1) apply for or 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; or

(2) enter into an agreement with the United States 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) Requires an agency that takes an action described by Subsection (b) to:

(1) cooperate with TPWD; and

(2) enter into an interagency contract that may provide for the payment of funds held by TPWD, or funds to which TPWD has access, for purposes of carrying out the action.

Sec. 83.052. PUBLIC NOTICE AND INPUT. (a) Requires TPWD or the state agency, before engaging in an activity authorized by Section 83.051, to:

(1) provide public notice; and

(2) solicit and consider comments from members of the task force on economic growth and endangered species created under Section 490E.003 (Creation), Government Code; affected landowners; conservation interests; and business interests affected by the activity.

(b) Authorizes the public notice required by this section to be made by:

(1) publication in the Texas Register;

(2) posting on TPWD's Internet website;

(3) written correspondence;

(4) announcement at a public meeting; or

(5) any means likely to ensure actual notice.

(c) Authorizes TPWD or the state agency to create advisory committees to assist TPWD or the state agency in carrying out an activity authorized by Section 83.051. Requires the membership of an advisory committee created under this

subsection to be appointed so that one-third of the members are representatives of affected landowners or property owners.

(c-1) Requires that the composition of an advisory committee created under Subsection (c) provide the balance necessary to address economic, environmental, and policy issues related to the specific issue or action under consideration.

(d) Provides that Chapter 2110 (State Agency Advisory Committees), Government Code, does not apply to the size, composition, or duration of an advisory committee created under this section.

Sec. 83.053. HABITAT PROTECTION RESEARCH FUND. (a) Provides that the habitat protection research fund is held by the comptroller of public accounts of the State of Texas (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) Authorizes money in the habitat protection research fund to be used only to:

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

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

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

(c) Requires that research grants described by Subsection (b) be awarded by the state agency.

SUBCHAPTER D. COORDINATED STATE ENDANGERED SPECIES RESPONSE COMMITTEE

Sec. 83.101. COMMITTEE COMPOSITION. Provides that the Coordinated State Endangered Species Response Committee (response committee) is composed of the following members or their designees:

(1) the commissioner of the Department of Agriculture;

(2) the commissioner of the General Land Office;

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

(4) the comptroller;

(5) the executive director of TPWD; and

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

Sec. 83.102. PRESIDING OFFICER; SUPPORT STAFF. (a) Provides that 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. Provides that the position of chair rotates every two years in the order listed in Section 83.101, beginning with the commissioner of the Department of Agriculture.

(b) Requires the chair, with the consent of other committee members, to:

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

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

(c) Requires agency staff of the chair of the response committee to provide support for the committee.

Sec. 83.103. MEETINGS. (a) Requires the response committee to meet at least monthly. Requires that notice of meetings be posted, and meetings be open to the public.

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

(c) Prohibits the response committee from meeting or making a decision unless a quorum is present.

(d) Requires the attorney general, notwithstanding Section 402.045 (Limitation), Government Code, the attorney general, at the request of the response committee, to provide legal advice to the response committee.

Sec. 83.104. DUTIES OF RESPONSE COMMITTEE. Requires the response committee to:

(1) oversee and guide the state's coordinated response to listings and potential listings of endangered species in this state, and comments and positions in response to actions of the United States Fish and Wildlife Service; and

(2) select the holder of 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.

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

Sec. 83.106. REPORT. Requires the response committee, not later than December 1 of each even-numbered year, to 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 6. Amends Section 403.452, Government Code, by amending Subsections (a) and (c) and adding Subsection (e), as follows:

(a) Authorizes the comptroller, to promote compliance with federal law protecting endangered species and candidate species in a manner consistent with this state's economic development and fiscal stability, to:

(1) hold a federal permit issued in connection with a candidate conservation plan developed by the comptroller or the development of which is coordinated by the comptroller;

(2) establish the habitat protection fund, to be held by the comptroller outside the treasury, to be used to pay the costs of monitoring or administering the implementation of a candidate conservation plan;

(3) impose or provide for the imposition of such fees as are necessary or advisable for a candidate conservation plan developed by the comptroller or the development of which is coordinated by the comptroller; and

(4) implement, monitor, or support the implementation of a candidate conservation plan developed by the comptroller or the development of which is coordinated by the comptroller.

Deletes existing text authorizing the comptroller to develop or coordinate the development of a habitat conservation plan or candidate conservation plan; apply for and hold a federal permit issued in connection with a habitat conservation plan; enter into an agreement for the implementation of a candidate conservation plan with the United States Department of the Interior or assist another entity in entering into such an agreement; establish the habitat protection fund to be used to support the development or coordination of the development of a habitat conservation plan or a candidate conservation plan; impose or provide for the imposition of a mitigation fee in connection with a habitat conservation plan; and implement, monitor, or support the implementation of a habitat conservation plan developed by the comptroller or the development of which is coordinated by the comptroller. Makes nonsubstantive changes.

(c) Provides that the legislature finds that expenditures described by Subsection (a)(2), rather than Subsection (a)(4), serve public purposes, including economic development in this state.

(e) Provides that the authority of the comptroller to enter into an agreement with the United States Department of the Interior for the implementation of a candidate conservation plan expires September 1, 2013.

SECTION 7. Amends Section 403.453(a), Government Code, to authorize the comptroller, upon consideration of the factors identified in Subsection (b) (relating to requiring the comptroller to consider certain factors), to designate one of certain agencies to undertake the functions identified in Section 403.452(a)(3) or (4), rather than Section 403.452(a)(1), (2), (3), (5), or (6).

SECTION 8. Amends Section 490E.004(a), Government Code, as follows:

(a) Authorizes the task force on economic growth and endangered species (task force) to assess the economic impact on the state of federal, state, or local regulations relating to endangered species. Deletes existing text authorizing the task force to 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 facilitate state and local governmental efforts to effectively implement endangered species regulations in a cost-efficient manner.

SECTION 9. Repealers: Sections 490E.001 (Purpose), 490E.004(b) (relating to the task force providing recommendations, on request by a local government or state official, relating to cost effective efforts to address endangered species issues), 490E.005 (Advisory Committees), and 490E.006 (Coordination With Other Entities), Government Code.

SECTION 10. Makes application of the changes in law made by Section 83.051(b), Parks and Wildlife Code, as added by this Act, prospective.

SECTION 11. Effective date: September 1, 2013.