

## **BILL ANALYSIS**

S.B. 1455  
By: Wentworth  
Culture, Recreation, & Tourism  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Currently, private landowners, corporations, state or local governments, or other non-federal landowners who wish to conduct activities on their land that might incidentally harm endangered or threatened wildlife, must first obtain an incidental take permit from the United States Fish and Wildlife Service. To obtain a permit, the applicant must develop a regional habitat conservation plan which is designed to offset any harmful effect the proposed activity might have on the species, and often provide for setting aside species habitat preserve land as an integral component of the plan.

Chapter 83 (Federal-State Agreements), Parks and Wildlife Code, establishes important procedural and substantive requirements for governmental entities that wish to establish conservation plans under the federal Endangered Species Act.

S.B. 1455 lengthens certain timelines to allow greater flexibility in developing and implementing important conservation measures relative to potential preserve areas. The bill also clarifies that mechanisms identifying habitat preserve on a phased, rolling basis delay triggering Chapter 83 timeframes until each preserve is identified.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

SECTION 1. Amends Section 83.013(d), Parks and Wildlife Code, to authorize a plan participant to accept, rather than apply for, a federal permit described in this subsection. Provides that a plan participant must demonstrate that adequate sources of funding exist, rather than that adequate sources of funding exist, to acquire land for habitat preserves.

SECTION 2. Amends Section 83.015, Parks and Wildlife Code, by amending Subsections (a) and (b) and adding Subsections (e) and (f), as follows:

- (a) Requires a regional habitat conservation plan, including any mitigation fee, except as provided by Subsection (f), to be based on the amount of harm to each endangered species to be protected under the regional habitat conservation plan.
- (b) Makes a conforming change.
- (e) Defines "recovery criteria," for purposes of this section.
- (f) Authorizes that a regional habitat conservation plan, including any mitigation fee, or the size of proposed habitat preserves to be based partly on any recovery criteria applicable to each endangered species to be protected under the plan, after a notice and hearing by the plan participants.

SECTION 3. Amends Section 83.017(c), Parks and Wildlife Code, to make a nonsubstantive change.

SECTION 4. Amends Section 83.018, Parks and Wildlife Code, by amending Subsection (c) and adding Subsection (d), as follows:

(c) Requires the plan participants, except as otherwise provided by Subsection (d), to make offers based on fair market value to the landowners for the acquisition of fee simple or other interest in land designated in the regional habitat conservation plan as proposed habitat preserve not later than four, rather than two, years after the issuance of the federal permit or six, rather than three, years after the initial application for the federal permit, whichever is later, rather than earlier. Requires acquisition of all habitat preserves designated in the regional habitat conservation plan as habitat preserve to be completed not later than the sixth, rather than fourth, anniversary of the date on which the federal permit was issued, except as provided by Subsection (e). Makes conforming changes.

(d) Requires plan participants, if plan participants have not designated a landowner's land as proposed habitat preserve in a regional habitat conservation plan before the date on which the federal permit is issued but designate the land as proposed habitat preserve in a regional habitat conservation plan on or after that date, to make an offer to the landowner based on fair market value for the acquisition of fee simple or other interest in the land not later than the fourth anniversary of the date on which the land is identified or designated as proposed habitat preserve.

(e) Requires plan participants to complete acquisition of land subject to Subsection (d) as habitat preserves not later than the fifth anniversary of the date on which the plan participants identified or designated the land as proposed habitat preserves.

SECTION 5. Amends Section 83.020(d), Parks and Wildlife Code, as follows:

(d) Deletes existing text prohibiting the plan participant from submitting an application for a federal permit until a certain time.

SECTION 6. Repealer: Section 83.020(e) (Grievance with Development of Regional Habitat Conservation Plan), Parks and Wildlife Code.

SECTION 7. Makes application of Sections 83.018 and 83.020, Parks and Wildlife Code, as amended by this Act, prospective.

SECTION 8. Effective date: upon passage or September 1, 2005.

#### **EFFECTIVE DATE**

Upon passage or September 1, 2005