

## **BILL ANALYSIS**

Senate Research Center

S.B. 468  
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Natural Resources  
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As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

In an effort to streamline the state's response to federal Endangered Species Act (Act) listings, S.B. 468 modernizes the Parks and Wildlife Code and clarifies agency roles in the Government Code. Subchapter A (Federal-State Agreements), Chapter 83 (Federal-State Agreements), Parks and Wildlife Code, has not been updated in over a decade, and in that time the number of potential endangered species listings has risen significantly. In the next five years there are more than 100 species that Texas will have to evaluate and respond to, and in short order. The timeline for the Act listing process is approximately two years, but may be rushed, extended, or ignored by the United States Fish and Wildlife Department.

Based on the success of the Task Force on Economic Growth and Endangered Species under the leadership of Comptroller Susan Combs, and the establishment of a comprehensive webpage at [www.keepingtexasfirst.com](http://www.keepingtexasfirst.com), S.B. 468 retains this task force as an integral part of the state's response to endangered species listings. At the suggestion of the comptroller, this bill establishes a Habitat Protection Research Fund so that money can be collected and research grants can be awarded to ensure that Texas has the "best scientific and commercial data available," which is the sole basis by which the United States Fish and Wildlife Department may make a determination for listing (16 U.S.C.A. § 1533 (b)(1)(A)).

Additionally, S.B. 468 creates a new Subchapter C in Chapter 83 of the Parks and Wildlife Code. The new subchapter will allow for the wildlife biologists and specialists at the Texas Parks and Wildlife Department (TPWD) to hold a federal permit under the Act and work with landowners, local communities, industry, state and county entities, and the federal government to establish a protective habitat for species and prevent further harm. To ensure government transparency, this bill also requires TPWD to solicit comments from the public and interested parties before engaging in any permit and contract negotiations.

As proposed, S.B. 468 amends current law relating to endangered species habitat conservation.

### **RULEMAKING AUTHORITY**

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

### **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(4), Parks and Wildlife Code, to redefine "federal permit."

SECTION 3. 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 4. Amends Chapter 83, Parks and Wildlife Code, by adding Subchapter C, as follows:

#### SUBCHAPTER C. HABITAT PROTECTION BY THE DEPARTMENT

Sec. 83.031. DEFINITIONS. Defines, in this subchapter, "candidate conservation plan," "candidate species," "endangered species," "federal act," and "federal permit."

Sec. 83.032. DEPARTMENT AUTHORITY. (a) Authorizes TPWD, subject to the requirements of this subchapter, to apply for and hold a federal permit issued in connection with a habitat conservation plan, a 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 enter into an agreement with the United States Department of the Interior or other federal department in connection with a habitat conservation plan, a candidate conservation plan, or similar plan authorized or required by federal law in connection with a candidate species or endangered species.

(b) Prohibits a state agency, other than an institution of higher education, unless authorized by TPWD, from applying for or holding a federal permit issued in connection with a habitat conservation plan, a candidate conservation plan, or similar plan authorized or required by federal law regarding a candidate species or endangered species, or enter into an agreement with the United States Department of the Interior or other federal department in connection with a habitat conservation plan, a candidate conservation plan, or similar plan authorized or required by federal law regarding a candidate species or endangered species.

(c) Requires that an authorization described by Subsection (b) be documented by an interagency contract that is authorized to provide for the payment of funds held by TPWD, or funds to which TPWD has access, for the purpose of carrying out the activity authorized by that subsection.

Sec. 83.033. PUBLIC NOTICE AND INPUT. (a) Requires TPWD, before undertaking an activity authorized by Subsection 83.032 (Department Authority), to provide public notice to and to solicit and consider comments from members of the task force on economic growth and endangered species, as created by 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 publication in the Texas Register, by posting on TPWD's website, by written correspondence, by public meeting, or by other means likely to ensure actual notice.

(c) Authorizes TPWD to create advisory committees to assist TPWD in carrying out the activities authorized by Section 83.032.

(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. 83.034. 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.

(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, as that term is defined under Section 403.451 (Definitions);

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

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

(c) Requires that research grants described by Subsection (b) be awarded by TPWD.

SECTION 5. 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 [a mitigation fee in connection with a habitat conservation plan or] 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 candidate conservation plan, rather than the implementation of a habitat conservation plan or candidate conservation plan developed by the comptroller or the development of which is coordinated by the comptroller.

Deletes existing text authorizing 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 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 or candidate conservation plan developed by the comptroller or the development of which is coordinated by the comptroller; and 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. Makes conforming and 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 6. Amends Section 403.453(a), Government Code, as follows:

(a) Authorizes the comptroller, upon consideration of the factors identified in Subsection (b) (relating to requiring the comptroller to consider certain factors in designating an agency), to designate one of the following agencies to undertake the functions identified in Section 403.452(a)(1), (3), or (4), rather than Section 403.452(a)(1), (2), (3), (5), or (6):

(1) the Department of Agriculture;

(2) TPWD;

(3) the Texas Department of Transportation;

(4) the State Soil and Water Conservation Board; or

(5) any agency receiving funds through Article VI (Natural Resources) of the 2012-2013 appropriations bill.

SECTION 7. Amends Section 490E.004, Government Code, as follows:

Sec. 490E.004. FUNCTIONS AND DUTIES. Deletes existing Subsection (a) designation. Authorizes the task force to assess the economic impact on the state of federal, state, or local regulations relating to endangered species and facilitate state and local governmental efforts to effectively implement endangered species regulations in a cost-efficient manner. 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.

Deletes existing Subsection (b) authorizing the task force, if requested by local government or state official, to review state and local governmental efforts to address endangered species issues and provide recommendations to make these efforts more cost-effective. Deletes existing text requiring the task force to consider all available options as part of its recommendations, including fee simple acquisition of land, conservation easements, and use of land owned by local governments or this state, recovery crediting, and all relevant federal programs.

SECTION 8. Repealer: Section 490E.005 (Advisory Committees), Government Code.

SECTION 9. (a) Provides that the change in law made by Section 83.032(b), Parks and Wildlife Code, as added by this Act, applies to a federal permit issued, an application for a federal permit submitted, or a conservation agreement entered into on or after the effective date of this Act.

(b) Provides that a federal permit issued, an application for a federal permit submitted, or a conservation agreement entered into before the effective date of this Act is governed by the law in effect at the time the action was taken, and that law is continued in effect for that purpose.

SECTION 10. Effective date: September 1, 2013.