

**House Bill 3509**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

SECTION 1. Section 83.005(b), Parks and Wildlife Code, is amended to read as follows:

(b) In this section, "conservation agreement" includes an agreement between ~~the state or~~ a political subdivision of the state and the United States Department of the Interior under the federal act that does not relate to a federal permit as defined by Section 83.011.

SECTION 2. Section 83.011, Parks and Wildlife Code, is amended by adding Subdivisions (1-a), (1-b), and (13) and amending Subdivision (4) to read as follows:

(1-a) "Candidate conservation plan" means a plan to implement actions necessary for the conservation of one or more candidate species or species likely to become a candidate species in the near future.

(1-b) "Candidate species" means a species identified by the United States Department of the Interior as appropriate for listing as threatened or endangered.

(4) "Federal permit" means a permit issued under ~~[Section 7 or 10(a) of]~~ the federal act, including Section 7 or 10(a) of the federal act.

(13) "Response committee" means the Coordinated State Endangered Species Response Committee established under Subchapter D.

SECTION 3. The heading to Section 83.013, Parks and Wildlife Code, is amended to read as follows:

Sec. 83.013. AUTHORITY OF ~~[DEPARTMENT OR]~~ POLITICAL SUBDIVISION.

SENATE VERSION (IE)

(Unless otherwise indicated, all SECTIONS below are from FA1)

No equivalent provision.

No equivalent provision.

No equivalent provision.

CONFERENCE

**House Bill 3509**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)  
(Unless otherwise indicated, all SECTIONS below are from FA1)

CONFERENCE

SECTION 4. Sections 83.013(a) and (b), Parks and Wildlife Code, are amended to read as follows:

(a) A ~~[The department or a]~~ political subdivision may participate in the study and preparation for and creation of a habitat conservation plan.

(b) Subject to this subchapter, ~~[the department or]~~ a political subdivision may participate in the study and preparation for and creation of a regional habitat conservation plan.

SECTION 5. Chapter 83, Parks and Wildlife Code, is amended by adding Subchapters C and D to read as follows:

SUBCHAPTER C. HABITAT CONSERVATION BY THE DEPARTMENT

Sec. 83.051. DEPARTMENT AND STATE AGENCY AUTHORITY. (a) The department may:

(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 the department; 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.

No equivalent provision.

SECTION 1. Subtitle F, Title 4, Government Code, is amended by adding Chapter 490F to read as follows:

No equivalent provision.

**House Bill 3509**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

No equivalent provision.

(b) A state agency may:

- (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) An agency that takes an action described by Subsection (b) must:

SENATE VERSION (IE)

(Unless otherwise indicated, all SECTIONS below are from FA1)

CHAPTER 490F. HABITAT CONSERVATION BY A STATE AGENCY

Sec. 490F.001. DEFINITIONS. Notwithstanding the definitions contained in Subchapter B, Chapter 83, Parks and Wildlife Code, the following words and terms, when used in this subchapter, shall have the following meanings:

(1) "Habitat conservation plan" means a plan or program to protect a candidate species or endangered species by habitat preserves or other protection strategies developed in order to prevent listing a species or if necessary to obtain a federal permit."

(2) "State agency" means state officer, board, commission, or department with statewide jurisdiction, excluding an institution of higher education.

(3) "Federal permit" means a permit issued under Section 10(a) of the federal act.

Sec. 490F.002. STATE AGENCY AUTHORITY. (a) Under provisions of 490E.004(c), Government Code, a state agency may 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, threatened, or endangered species. A state agency that takes an action under this section must notify other members of the task force described in section 490E.003 (a).

(b) An agency that takes an action described by Subsection (a) must:

CONFERENCE

**House Bill 3509**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

(1) cooperate with the department; and

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

Sec. 83.052. PUBLIC NOTICE AND INPUT. (a) Before engaging in an activity authorized by Section 83.051, the department or state agency shall:

(1) provide public notice; and

(2) solicit and consider comments from:

(A) members of the task force on economic growth and endangered species created under Section 490E.003, Government Code;

(B) affected landowners;

(C) conservation interests; and

(D) business interests affected by the activity.

(b) The public notice required by this section may be made by:

(1) publication in the Texas Register;

(2) posting on the department's Internet website;

(3) written correspondence;

(4) announcement at a public meeting; or

(5) any means likely to ensure actual notice.

(c) The department or state agency may create advisory committees to assist the department or state agency in carrying out an activity authorized by Section 83.051. The membership of an advisory committee created under this subsection must be appointed so that one-third of the members

SENATE VERSION (IE)

(Unless otherwise indicated, all SECTIONS below are from FA1)

(1) cooperate with all appropriate member agencies of the task force; and

(2) enter into an interagency contract that may provide for the payment of funds held by the comptroller inside the treasury, at the direction of the task force established in section 490E, Government Code, for the purposes of carrying out this chapter.

Sec. 490F.003. PUBLIC NOTICE AND INPUT. (a) Before engaging in an activity authorized by Section 490F.002 (a), a state agency shall:

(1) provide public notice; and

(2) solicit and consider comments from:

(A) the task force on economic growth and endangered species created under Section 490E.003, Government Code;

(B) affected landowners;

(C) conservation interests; and

(D) business interests affected by the activity; and

(E) mineral owners.

CONFERENCE

**House Bill 3509**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

are representatives of affected landowners or property owners.

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

(d) Chapter 2110, 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) The habitat protection research fund is held by the 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) Money in the habitat protection research fund may 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) Research grants described by Subsection (b) shall be awarded by the state agency.

No equivalent provision.

SENATE VERSION (IE)

(Unless otherwise indicated, all SECTIONS below are from FA1)

Sec. 490F.004. HABITAT PROTECTION RESEARCH

FUND. (a) The habitat protection and research fund is held by the comptroller inside 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. This fund does not apply to activities related to species proposed for listing under the Endangered Species Act prior to September 1, 2013.

(b) Money in the habitat protection and research fund may be used only to:

(1) provide grants to institutions for research into candidate, threatened, 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) Private money contributed to the habitat protection fund under Government Code Section 403.452 is held by the comptroller outside the treasury.

(d) Private funds collected pursuant to a mitigation plan shall

CONFERENCE

**House Bill 3509**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

(Unless otherwise indicated, all SECTIONS below are from FA1)

be held only by the comptroller outside the treasury for the use prescribed by the plan.

(e) The comptroller may identify funds to reimburse state institutions of higher education from the habitat protection and research fund for science and biology research and work related to threatened or endangered species.

No equivalent provision.

Sec. 490F.005. CONFIDENTIAL INFORMATION. Information collected under this subchapter by an agency, or an entity acting on the agency's behalf, from a private landowner or other participant or potential participant in a habitat conservation plan, proposed habitat conservation plan, candidate conservation plan, or proposed candidate conservation plan is confidential and exempt from disclosure under Chapter 552, if the information relates to the specific location, property owner identification, species identification, or quantity of any animal or plant life at a specific location for which a plan is under consideration or development or has been established under this subchapter. Information may be disclosed to a state agency or state officer upon signature of a confidentiality agreement, but may not be disclosed to a federal agency.

No equivalent provision.

SUBCHAPTER D. COORDINATED STATE  
ENDANGERED SPECIES RESPONSE COMMITTEE

Sec. 83.101. COMMITTEE COMPOSITION. The Coordinated State Endangered Species 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;

**House Bill 3509**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)  
(Unless otherwise indicated, all SECTIONS below are from FA1)

CONFERENCE

(4) the comptroller;

(5) the executive director of the Parks and Wildlife Department; and

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

Sec. 83.102. PRESIDING OFFICER; SUPPORT STAFF. (a) 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. 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) The chair, with the consent of other committee members, shall:

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

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

(c) Agency staff of the chair of the response committee shall provide support for the committee.

Sec. 83.103. MEETINGS. (a) The response committee shall meet at least monthly. Notice of meetings must be posted, and meetings must be open to the public.

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

(c) The response committee may not meet or make a decision unless a quorum is present.

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

**House Bill 3509**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)  
(Unless otherwise indicated, all SECTIONS below are from FA1)

CONFERENCE

Sec. 83.104. DUTIES OF RESPONSE COMMITTEE. The response committee shall:

(1) oversee and guide the state's:

(A) coordinated response to listings and potential listings of endangered species in this state; and

(B) 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. The response committee may adopt rules as necessary to implement administrative procedures of the response committee.

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

(a) To promote compliance with federal law protecting endangered species and candidate species in a manner

No equivalent provision.



**House Bill 3509**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)  
(Unless otherwise indicated, all SECTIONS below are from FA1)

CONFERENCE

consistent with this state's economic development and fiscal stability, the comptroller may:

(1) ~~[develop or coordinate the development of a habitat conservation plan or candidate conservation plan;~~

~~[(2) 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;

~~(2) [(3) 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;~~

~~[(4)]~~ establish the habitat protection fund, to be held by the comptroller outside the treasury, to be used to ~~[support the development or coordination of the development of a habitat conservation plan or a candidate conservation plan, or to]~~ pay the costs of monitoring or administering the implementation of ~~[such]~~ a candidate conservation plan;

~~(3) [(5)]~~ 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) [(6)]~~ implement, monitor, or support 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.

(c) The legislature finds that expenditures described by Subsection ~~(a)(2)~~ ~~[(a)(4)]~~ serve public purposes, including economic development in this state.

**House Bill 3509**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

(e) 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. Section 403.453(a), Government Code, is amended to read as follows:

(a) Upon consideration of the factors identified in Subsection (b), the comptroller may designate one of the following agencies to undertake the functions identified in Section 403.452(a)(3) or (4) [~~403.452(a)(1), (2), (3), (5), or (6)~~]:

- (1) the Department of Agriculture;
- (2) the Parks and Wildlife Department;
- (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.

No equivalent provision.

SENATE VERSION (IE)

(Unless otherwise indicated, all SECTIONS below are from FA1)

SECTION 8. Section 403.452, Chapter 403, Government Code, is amended by adding Subsection (e) to read:

(e) Except as provided under Section 490E.004 (c), the authority of the comptroller to enter into an agreement for any species other than the dunes sagebrush lizard, under this section, with the United States Fish and Wildlife Service for the implementation of a candidate conservation plan or a habitat conservation plan, expires September 1, 2013.

No equivalent provision.

SECTION 2. Section 490E.000, Government Code, is added as follows:

490E.000. DUTIES. The task force on economic growth and endangered species;

(a) shall 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

CONFERENCE

**House Bill 3509**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

(Unless otherwise indicated, all SECTIONS below are from FA1)

federal law in connection with a candidate species or endangered species that is to be held by a state agency; and (b) may coordinate the comments, positions and response to listings and potential listings of endangered species for state agencies.

No equivalent provision.

SECTION 3. Sections 490E.003 (a) and (b), Government Code, are amended to read as follows:

(a) The task force on economic growth and endangered species is created and composed of the following or their designee:

- (1) the comptroller;
- (2) the commissioner of agriculture;
- (3) the commissioner of the General Land Office;
- (4) the chair of the Railroad Commission;
- (5) the executive director of the State Soil and Water Conservation Board;
- ~~(3)(6)~~ the executive director of the Parks and Wildlife Department;
- ~~(4)(7)~~ the executive director of the Texas Department of Transportation;
- (8) the director of the Texas A&M Agrilife Extension Service; and
- (9) the executive director of the Texas Commission on Environmental Quality.

(b) ~~The comptroller is the presiding officer of the task force.~~The position of presiding officer rotates among the statewide elected members specified in Subsection (a) regardless of who occupies the named office at the time of the rotation. The position of chair rotates every two years in the

**House Bill 3509**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

SECTION 8. Section 490E.004(a), Government Code, is amended to read as follows:

- (a) The task force may[~~;~~  
[~~(1)~~] assess the economic impact on the state of federal, state, or local regulations relating to endangered species[~~;~~  
[~~(2)~~] ~~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~~  
[~~(3)~~] ~~facilitate state and local governmental efforts to effectively implement endangered species regulations in a cost efficient manner~~].

No equivalent provision.

SENATE VERSION (IE)

(Unless otherwise indicated, all SECTIONS below are from FA1)

order listed in Subsection (a), beginning with the comptroller.

SECTION 4. Section 490E.004, Government Code, is amended by amending subsection (b) and adding subsections (c) and (d) as follows:

- (b) If requested by a landowner, other person in this state, or a local government or state official, the task force may review state or local governmental efforts to address endangered species issues and provide recommendations to make those efforts more cost effective.
- (c) If determined by the task force, a state agency that is represented on the task force may hold a permit issued under the federal Endangered Species Act.
- (d) The permit holder shall inform members of the task force of any mitigation plan, including costs, at least 10 days prior to the plan being submitted to the U.S. Fish and Wildlife Service for approval.

SECTION 5. Section 490E.005, Government Code, is

CONFERENCE

**House Bill 3509**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

(Unless otherwise indicated, all SECTIONS below are from FA1)

amended by amending subsections (a) and (c) and adding subsections (f) and (g) to read as follows:

(a) With the advice of the task force, the presiding officer ~~shall~~~~controller may~~ create at least one advisory committees for each species to assist the task force with its work. Of the members of an advisory committee:

(1) ~~one-fourth~~~~one-third~~ must be representatives of affected landowners;

(2) ~~one-fourth~~~~one-third~~ must be representatives of conservation interests; and

(3) ~~one-fourth~~~~one-third~~ must be representatives of municipalities or other affected jurisdictions; and

(4) one-fourth must be representatives of affected business interests.

(c) The ~~presiding officer~~~~controller~~ shall designate one member of an advisory committee as interim presiding officer for the purpose of calling and conducting the initial meeting of the committee.

(f) The task force may create a Science and Biology Advisory Committee for a specific species composed of the following members:

(1) the State Geologist of Texas, director of the Bureau of Economic Geology at the University of Texas at Austin;

(2) a designee of the director of the Texas A&M AgriLife Extension Service with species expertise;

(3) a designee from the Parks & Wildlife Department with science and biology expertise; and

(4) any other persons the task force deems appropriate who have science and biology expertise.

**House Bill 3509**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

No equivalent provision.

No equivalent provision.

SECTION 9. The following provisions of the Government Code are repealed:

- (1) Section 490E.001;
- (2) Section 490E.004(b);
- (3) Section 490E.005; and
- (4) Section 490E.006.

SECTION 10. The changes in law made by Section 83.051(b), Parks and Wildlife Code, as added by this Act, apply only 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. 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 the former law is continued in effect for that purpose.

SENATE VERSION (IE)

(Unless otherwise indicated, all SECTIONS below are from FA1)

SECTION 6. Section 490E.008, Government Code, is amended to read as follows:

ADMINISTRATIVE SUPPORT. The presiding officer's ~~comptroller's~~ office shall provide administrative support and maintain a public website for ~~to~~ the task force.

SECTION 7. Section 490E.009, Government Code, is added as follows:

490E.009. ATTORNEY GENERAL. Notwithstanding Section 402.045, Government Code, the attorney general, at the request of the task force, shall provide legal advice to the task force.

SECTION 9. Section 490E.006, Government Code, is repealed.

No equivalent provision.

CONFERENCE

**House Bill 3509**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

(Unless otherwise indicated, all SECTIONS below are from FA1)

No equivalent provision.

SECTION 10. The Task Force on Economic Growth and Endangered Species, in collaboration with three members of the House State Affairs Committee appointed by the Speaker and three members of the Senate Natural Resources Committee appointed by the Lieutenant Governor, and one stakeholder representing landowner interests appointed by the Governor, shall conduct a study to determine state policies to defend against the overreaching inclusion of species on the Endangered Species List by the United States Fish and Wildlife Service. The study shall be submitted to the Governor, Lieutenant Governor, Speaker, and members of the legislature not later than December 1, 2014.

No equivalent provision.

SECTION 11. Nothing in this Act precludes a person or group of persons from working together and with the United States Fish and Wildlife Service to address threatened or endangered species issues.

No equivalent provision.

SECTION 12. An approved conservation plan, federal permit issued, an application for a federal permit submitted, or a conservation agreement entered into prior to the effective date of this bill is governed by the law in effect at the time the permit was acquired or the plan was approved and the former law continues in effect for the purpose of full implementation of the conservation plan, including the authority to apply for a federal permit in the event of a listing decision for the species covered by the conservation plan.

**House Bill 3509**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

SECTION 11. This Act takes effect September 1, 2013.

SENATE VERSION (IE)

(Unless otherwise indicated, all SECTIONS below are from FA1)

SECTION 13. Same as House version.

CONFERENCE