

## BILL ANALYSIS

Senate Research Center

S.B. 1272  
By: Wentworth  
Natural Resources  
6/23/1999  
Enrolled

### DIGEST

Currently, under Texas law, local political subdivisions may develop and enter into conservation agreements with federal agencies that are not subject to open meetings requirements or state monitoring. There is concern that these conservation plans may acquire and encumber private land inhabited by endangered species without notification or participation by the private landowners. This bill establishes guidelines for developing and implementing habitat and regional habitat conservation plans by local governmental entities.

### PURPOSE

As enrolled, S.B. 1272 establishes guidelines for developing and implementing habitat and regional habitat conservation plans by local governmental entities.

### RULEMAKING AUTHORITY

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

### SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 83, Parks and Wildlife Code, by designating Sections 83.001 - 83.004 as Subchapter A and adding a heading to Subchapter A, as follows:

#### SUBCHAPTER A. FEDERAL-STATE AGREEMENTS.

SECTION 2. Amends Chapter 83A, Parks and Wildlife Code, by adding Section 83.005, as follows:

Sec. 83.005. CONSERVATION AGREEMENTS FOR PROTECTION OF SPECIES. Requires any conservation agreement between a political subdivision of the state and the U.S. Department of the Interior to be developed in consultation with the Parks and Wildlife Department (department). Defines "conservation agreement."

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

#### SUBCHAPTER B. HABITAT PROTECTION BY POLITICAL SUBDIVISIONS

Sec. 83.011. DEFINITIONS. Defines "biological advisory team," "endangered species," "federal act," "federal permit," "governmental entity," "habitat conservation plan," "habitat preserve," "harm," "land development standards," "mitigation fee," "plan participant," and "regional habitat conservation plan."

Sec. 83.012. PURPOSE. Sets forth the purposes of this subchapter.

Sec. 83.013. AUTHORITY OF DEPARTMENT OR POLITICAL SUBDIVISION. Authorizes the department or a political subdivision to participate in the study and

preparation for and creation of a habitat conservation plan. Authorizes the department or a political subdivision to participate in the study and preparation for and creation of a regional habitat conservation plan. Sets forth certain actions a political subdivision may take in order to facilitate the creation of a habitat preserve and the setting aside of land to protect a species protected under a conservation agreement. Authorizes a plan participant to apply for a federal permit in conjunction with a regional habitat conservation plan only if the qualified voters of a plan participant have authorized the issuance of bonds or other debt financing in an amount equal to the estimated cost of acquiring all land for habitat preserves within the time required by this subchapter or the plan participant has demonstrated that adequate sources of funding exist to acquire all land for habitat preserves within the time required by this subchapter. Prohibits a governmental entity from implementing a regional habitat conservation plan or apply for a federal permit in conjunction with a regional habitat conservation plan if certain conditions occur.

Sec. 83.014. LIMITATION OF POWERS. Prohibits a governmental entity from imposing a regulation, rule, or ordinance related to endangered species unless the regulation, rule, or ordinance is necessary to implement a habitat conservation plan or regional habitat conservation plan for which the governmental entity was issued a federal permit. Provides that this subsection does not limit the authority of a governmental entity to adopt a rule, regulation, or ordinance restricting the withdrawal of groundwater. Prohibits a governmental entity from discriminating against a permit application, permit approval, or the provision of utility service for certain land. Prohibits a governmental entity from denying or limiting available water or wastewater service to land in the service area of the governmental entity that has been designated as habitat preserve or potential habitat preserve in a regional habitat conservation plan or in a habitat conservation plan. Prohibits a governmental entity from removing land from its water or wastewater utility service areas after the date established under Section 83.018(b), for the purposes of this section.

Sec. 83.015. BIOLOGICAL REVIEW; CRITERIA. Requires a regional habitat conservation plan to be based on the amount of harm to each endangered species to be protected under the regional habitat conservation plan. Requires the size of proposed habitat preserves to be based solely on the amount of harm to the endangered species to be protected in the regional habitat conservation plan. Requires the plan participants, together with the Parks and Wildlife Commission (commission) and the landowner members of the citizens advisory committee, to appoint a biological advisory team. Requires at least one member to be appointed by the commission and one member by the landowner members of the citizens advisory committee. Provides that the member appointed by the commission serves as presiding officer of the team. Requires the team to assist in certain studies. Provides that meetings of the biological advisory team are subject to the open meetings law, and all work product of the biological advisory team is subject to the open records law.

Sec. 83.016. CITIZENS ADVISORY COMMITTEE. Requires the plan participants to appoint a citizens advisory committee to assist in preparing the regional habitat conservation plan and the application for a federal permit. Requires at least four members or 33 percent of the citizens advisory committee, whichever is greater in number, to own undeveloped land or land in agricultural use in the regional habitat conservation plan area. Prohibits a landowner member from being an employee or elected official of a plan participant or any other local, state, or federal governmental entity. Requires the plan participants to appoint one additional landowner, who owns land within the proposed habitat preserve system, to the citizens advisory committee, not later than a certain date. Requires the commission to appoint one representative to the citizens advisory committee. Provides that the commission's representative is a voting member of the committee.

Sec. 83.017. DEVELOPMENT OF REGIONAL HABITAT CONSERVATION PLAN. Provides that meetings of the citizens advisory committee and meetings of the plan participants regarding planning, development, and implementation of the regional habitat

conservation plan are subject to the open meetings law. Provides that all data, reports, and other information regarding the regional habitat conservation plan, and any other information relied on by the biological advisory team, are subject to the open records law. Requires the plan participants to notify in writing each owner of land identified by the plan participants as habitat preserve or potential habitat preserve, not later than a certain date. Requires the plan participants to use the county tax rolls to identify the owners of land identified as habitat preserve or potential habitat preserve. Sets forth certain information required to be included in the notice.

Sec. 83.018. PRESERVE ACQUISITION. Prohibits the designation of a tract of land as habitat preserve or potential habitat preserve or the presence of endangered species or endangered species habitat to be considered in determining the fair market value of the property for acquisition as a habitat preserve. Prohibits a change to plan participant rules and regulations that occurs after the earliest date that the biological advisory team, citizens advisory committee, or plan participant initially identifies a tract of land as habitat preserve or potential habitat preserve from being considered in determining the fair market value of the property for acquisition as a habitat preserve. Requires the plan participants to make offers based on fair market value to the landowners for the acquisition of fee simple or other property interest in land designated in the regional habitat conservation plan as habitat preserve by a certain date. Requires acquisition of all habitat preserves to be completed by a certain date. Requires a plan participant subject to this subsection who does not meet an applicable deadline to file an application to amend the federal permit to remove the nonacquired habitat preserve property from the regional habitat conservation plan as a habitat preserve by a certain date.

Sec. 83.019. NOTICE AND HEARING REQUIREMENTS. Requires a plan participant to comply with the notice and hearing requirements of this section before adopting any regional habitat conservation plan, plan amendment, ordinance, budget, fee schedule, rule, regulation, or order to implement this subchapter. Requires the plan participant to publish a notice by a certain date in the newspaper of largest general circulation in the county in which the plan participant proposing the action is located. Requires a public hearing on the proposed action to be held at the time and place specified in the notice.

Sec. 83.020. GRIEVANCE WITH DEVELOPMENT OF REGIONAL HABITAT CONSERVATION PLAN. Authorizes an individual appointed to a citizens advisory committee under Section 83.016(b) to file a grievance with the commission regarding the development of a regional habitat conservation plan under this subchapter if the individual believes the plan is being developed in violation of this subchapter. Requires the individual filing the grievance to have been a member of the citizens advisory committee for the plan named in the grievance. Requires the grievance to be filed under this section not later than a certain date. Requires the grievance to cite each provision of this subchapter alleged to have been violated during the development of the plan and describe each act alleged to have violated this subchapter. Requires the commission to review a grievance filed under this section to determine whether the plan is being developed in compliance with this subchapter. Authorizes the commission to dismiss the grievance, if after reviewing the grievance the commission finds that the grievance has no merit. Requires the commission to hold a public hearing if the commission finds that the grievance does have merit. Requires the commission to take testimony from each plan participant and from the individual filing the grievance. Requires the commission to vote, at the conclusion of testimony, on whether to approve or dismiss the grievance or to schedule a public hearing by a certain date. Requires the commission to instruct the plan participant or participants to amend the plan so that it will comply with this subchapter, if the commission approves the grievance. Prohibits the plan participant from submitting an application for a federal permit until the commission is satisfied its instructions to amend the plan to comply with this subchapter have been carried out. Prohibits a plan participant in a plan that is the subject of a grievance filed with the commission from submitting an application for a federal permit before the commission has

performed certain actions. Provides that if an individual files a grievance under this section that individual may not file a subsequent grievance.

SECTION 4: Repealer: Section 83.006, Parks and Wildlife Code (Regional Plans for Endangered Species Protection). Authorizes a county to continue to enforce a regional habitat conservation plan that has been formally approved by the U.S. Fish and Wildlife Service as authorized by Section 83.006(c)(2), Parks and Wildlife Code, as that section existed immediately before its repeal by this Act, and that former law is continued in effect for that purpose, notwithstanding the repeal.

SECTION 5. Provides that this Act applies to a regional habitat conservation plan for which an application for a federal permit was submitted on or after January 1, 1999. Provides that Sections 83.018(a) and (b), Parks and Wildlife Code, apply to the acquisition of land by a regional habitat conservation plan for which a federal permit was issued before September 1, 1999.

SECTION 6. Effective date: September 1, 1999.