

SUBJECT: Coastal management plan

COMMITTEE: Land and Resource Management— committee substitute recommended

VOTE: 7 ayes — Mowery, Combs, Hamric, Hilderbran, Howard, Krusee, B. Turner
0 nays
2 absent — Saunders, Alexander

WITNESSES: No public hearing

BACKGROUND: In 1989 the Legislature enacted legislation directing the General Land Office (GLO) to develop a plan to manage state-owned coastal lands.

In 1991 the Legislature directed that the GLO should develop, in cooperation with other state agencies, a long-term, comprehensive management program for all coastal resources. The GLO was also directed to establish a statewide policy on coastal erosion, beach access and sand-dune protection as well as a conservation program for state-owned wetlands in the coastal area. To oversee the coastal management program, the Coastal Coordination Council (CCC) was established.

The CCC was authorized to resolve conflicts between state agencies and review coastal permit actions by both state agencies and local governments, to see if they were consistent with coastal management program goals and policies. If the council certifies an agency's rules as consistent, the agency's routine actions are deemed consistent. The council reserves the ability to review only the agency's most significant actions. Agencies set thresholds to define significant actions. The CCC is chaired by the Texas land commissioner.

In 1991-1993 public hearings involving interested parties, state agencies, permit holders and members of the general public were held across the state. In March 1994 the CCC published proposed rules in the Texas Register and took public comments. Revised rules were published in final form in the Texas Register on September 23, 1994. In December of 1994, the final version of the program was approved by the CCC.

The Texas Coastal Zone Management (CZM) program was submitted to the National Oceanographic and Atmospheric Administration (NOAH) for

federal approval in order to gain entry into the federal Coastal Zone Management Program, administered by the U.S. Department of Commerce. Participation in the federal program is voluntary. In March 1995 Gov. George W. Bush withdrew the plan from federal consideration after members of the Texas Legislature expressed concern about the coastal management plan.

DIGEST:

CSHB 3226 would narrow the scope of the Coastal Coordination Committee's authority to review agency and subdivision actions, limit agency actions that could be reviewed by the CCC, and codify rules pertaining to the CCC's review powers. The CCC makeup would be changed, and the council's enforcement powers substantially amended.

The boundaries of the area governed by the coastal management area program would be established using the same boundaries delineated in the Oil Spill Prevention and Response Act (OSPRA). The coastal management program would be adjusted to meet the elements required for approval under the federal Coastal Zone Management Act.

The governor would withdraw the coastal management program if the federal government found that the state had failed to submit an approvable nonpoint source pollution program.

The council would, unless continued by the Legislature, be abolished on September 1, 1999.

The Coastal Coordination Council (CCC). The CCC would be composed of the GLO commissioner and the chairs, or designated appointees of the chairs, of the following entities: Parks and Wildlife Commission, Texas Natural Resource Conservation Commission, Railroad Commission, Texas Water Development Board the Texas Transportation Commission and a member of the state Soil and Water Conservation Board appointed by that board. The attorney general would be removed from the council.

The governor would appoint four members for two-year terms. They would include a representative of agriculture and three members who reside in a coastal areas, including a city or county elected official, a resident, or someone whose business is located in a coastal area. Council members appointed prior to the 74th Legislature would serve the rest of their terms, regardless of Senate confirmation.

A two-thirds vote of CCC members would be required for the council to act, except for the adoption of the coastal management program and placement of an item on the agenda.

The governor would designate a local elected official from a city directly affected by a matter under review before the CCC to serve as a non-voting member of the CCC for that matter only.

Coastal coordination council powers. The Coastal Management Program (CMP) would not be effective until it was approved by a majority of the council. The council would adopt goals and policies of the CM program by rule. A goal or policy of the CCC could not require agencies or subdivisions to perform actions that would exceed their constitutional or statutory authority.

CSHB 3226 would delete requirements that all agency or subdivision actions have to comply with the CMP. It would substitute a requirement that agencies and subdivisions take the plan into account before taking action, and issue a written determination that their action is consistent with program goals and policies.

The following agency rules would be have to comply with the goals and policies of the CM program: The General Land Office oil spill and prevention rules, TNRCC air quality, on-site sewage disposal system and underground storage tank rules and the Texas State Soil and Water Conservation Board agricultural and silvicultural nonpoint source pollution rules. The council could not review a proposed rule of the Texas Department of Agriculture.

The council, instead of the GLO, could appoint an advisory committee to advise the council and the GLO on coastal management issues, and the CCC would have to be included in a public hearing held to develop, review or amend the CMP.

Requirements of the coastal management plan could not be applied in such a manner as to take, damage or destroy property without adequate compensation.

The CCC would adopt procedures for the review of federal actions on consistency grounds.

Consistency review. The CCC could not review agency or subdivision actions or proposed actions for consistency with program rules and policies, unless the consistency determination was contested by a council member, agency or other person who filed a request for referral, alleging a significant unresolved dispute regarding a proposed action's consistency with the CMP. Three members of the CCC would have to agree to a review and to place the matter on the CCC's agenda. At least two-thirds of the council would have to vote to declare an action inconsistent.

The CCC would have to act on a agency or subdivision action within 25 days of the date that action was proposed.

If consistency review thresholds were in effect, the CCC could review a proposed action, that did not exceed thresholds, if the action could directly and adversely affect certain defined areas. If the proposed action for consistency was not subject to a formal hearing, the CCC could not review a proposed action unless the action exceeded applicable thresholds.

The CCC would establish a process to review agency rules for consistency, and would specifically identify which agency actions would have to comply with the goals and policies of the coastal management program.

A process would be established, by CCC rule, so that an agency or subdivision proposing a rule could receive a written preliminary consistency review no later than 45 days after the date of the request. If a proposed action was the subject of a preliminary consistency finding, it could not be reviewed by the CCC unless the permit or proposed action changed substantially since the finding was issued.

The CCC would, by rule, establish a process by which an individual or small business could request and receive assistance with filing applications for permits or other proposed actions.

Enforcement. When the CCC determined an action to be inconsistent, it would make recommendations on how the action could be changed to make it consistent. The agency or subdivision proposing the action deemed inconsistent, would then notify the CCC, within 20 days, on whether it will amend its proposed action. If the agency refused to amend its action, the CCC would ask the attorney general to issue an opinion on consistency, within 25 days.

Reports. The bill would repeal provisions in the Natural Resources Code requiring the GLO to present biennial reports to the Legislature, and instead require the GLO to prepare and submit an annual report on the effectiveness of the CM program to the CCC for approval. Every two years, the CCC would send the legislature the two reports that had been prepared during biennium.

**SUPPORTERS
SAY:**

The coastal management plan is the result of five years of hard work, numerous public hearings and input by a variety of parties. Texas needs the plan to coordinate efforts to address major coastal issues and ensure that the coast retains its economic vitality and environmental quality. The CCC brings together the governmental agencies that have jurisdiction over the coast and allows them to coordinate their actions and examine problems on a regional basis. The bill would also protect private property rights and give coastal residents, businesses and agriculture greater input into the management of the state's coastal resources.

The bill codifies many of the compromises worked out by the entities involved, compromises agreeable to a broad spectrum of the parties in the coastal regions of Texas who would be affected by the coastal management plan. The extremely broad review powers of the CCC would be narrowed by CSHB 3226, and the CCC would be given a reasonable amount of authority to review agency rules, without creating a cumbersome new bureaucracy. CSHB 3226 would simplify and speed up the CCC review process.

CSHB 3226 would create a program that could gain federal approval. Once a coastal management program is approved by the federal government, agencies like the Corps of Engineers and most federal or federally supported activities within the coastal management boundaries are required to comply with the state program. This would allow Texans to manage their own resources. The state could also become eligible for an estimated \$2 million in federal funds upon federal approval of the Texas Coastal Management Program.

CSHB 3226 would ensure that those seeking permits and decisions concerning whether their proposed action would be "consistent" with the goals and policies of the coastal management plan could find out what was expected of them from the very beginning and be reassured that the requirements would not change.

If a proposed action was the subject of a preliminary consistency finding, for example, it could not be reviewed by the CCC unless the permit or proposed action changed substantially since the finding was issued. CSHB 3226 would establish uniform coastal policies that all agencies — federal and state — would be required to follow.

The bill would also provide a necessary mechanism for small business and individuals to go to the CCC for assistance, to find out up front what will be expected of them under the program. Small business cannot afford the lawyers and consultants that larger entities employ as a matter of course.

CSHB 3226 would eliminate the CCC's authority to return a permit to state agencies and declare it administratively void. This is a tremendous power that could be too easily abused. CSHB 3226 would amend the CCC's enforcement procedures and provide that, in order to stop an agency, the CCC would be required to ask for an attorney general's opinion.

The bill would expand council membership to reflect increased agency coordination and more of the interests in the region. Agricultural and business representatives would be added to the council, as well as the Water Development Board, the State Soil and Water Conservation Board and the Texas Department of Transportation.

The previous boundaries of the coastal zone management plan contained whole coastal counties. CSHB 3226 would shrink the boundaries to those parts of the county that are in direct proximity to coastal waters, a much more appropriate geographical boundary for coastal plan.

**OPPONENTS
SAY:**

The coastal management program is unnecessary. It would create add yet another layer of bureaucracy to the permitting process, cause unnecessary additional review of agency actions and stifle economic development in the coastal region. There is no need for the Coastal Coordinating Council to have any review authority over agency rules.

The bill would also create a new cause of action, by people claiming that actions were not "consistent" with coastal management program goals and policies. Regulated entities would be caught in the middle of consistency reviews, since when an action is challenged as being inconsistent, it affects the applicants far more than the agency.

The boundary restrictions, further refined in specific definitions, would exempt far too many areas from the coastal management program.

There is no reason why the Texas Department of Agriculture rules should be specially exempted from complying with coastal management rules and policies.

NOTES:

The committee substitute delineated a different coastal boundary than the original bill, added references to subdivisions so certain local actions involving dune protection would be subject to review and provided that a preliminary finding of consistency would be binding unless the permit or proposed action was substantially changed. The filed version contained provisions concerning voluntary special area management plans which have been deleted.