SUBJECT: Guidelines for regional habitat conservation plans

COMMITTEE: Land and Resource Management — committee substitute recommended

VOTE: 7 ayes — Walker, F. Brown, Hardcastle, Howard, Krusee, Mowery, B. Turner

0 nays

1 present, not voting — Bosse

1 absent — Crabb

WITNESSES: For — T.J. Higginbotham, Take Back Texas; Thomas Kam, Balcones Canyonland Extortion Plan Park Landowner Association; Robert Kleeman, Ribelin Ranch Partners, Ltd.; David K. Langford, Texas Wildlife Association; Bill Powers, Texas Farm Bureau; Phil Savoy, Take Back Texas and Heritage Defense Fund, Inc.; Ike C. Sugg, Exotic Wildlife Association and Competitive Enterprise Institute; Wallace Klussmann

Against — David C. Frederick, U.S. Fish and Wildlife Service; Susan Rieff, National Wildlife Federation; Scott Royder, Sierra Club, Lone Star Chapter

BACKGROUND: The federal Endangered Species Act authorizes habitat conservation plans to protect the habitat of endangered species by reserving private land for the use of one or more species. These plans create habitat preserves for endangered species through agreements between landowners, who voluntarily reserve portions of their property, and one or more local governmental entities ("plan participants"), such as counties or municipalities.

Regional habitat conservation plans create habitat preserves through the acquisition and regulation of private land by one or more plan participants. These participants must receive a permit from the U.S. Department of the Interior to create regional plans. The only regional plan in Texas is the Balcones Canyonland Conservation Plan (BCCP), sponsored by the City of Austin and Travis County.

DIGEST:

CSHB 430 would establish rules for the development of regional habitat conservation plans by plan participants in Texas. The bill would repeal Parks and Wildlife Code, sec. 83.006, which currently governs the creation of regional habitat conservation plans.

Acquisition of habitat land. All land identified for habitat preserves under a regional plan would have to be acquired by the plan participants within four years after the issuance of a federal permit. Plan participants would have to demonstrate the financial capacity to buy all of the habitat land within the four-year deadline before they could apply for a federal permit. Participants would have to make an offer to buy habitat land based on the fair market value of the land. The value of the land could not be affected by the prior designation of the land as a habitat preserve or by changes to governmental regulations, including land development standards, implemented after the identification of the land as a potential habitat preserve. Plan participants would have to make offers for all habitat land in a regional plan within three years of the initial federal permit application or within two years of the issuance of the federal permit, whichever came first.

Regulation of habitat land. Plan participants could not impose regulations related to endangered species unless the regulation related to the operation or management of a habitat preserve owned by a participant. Plan participants could not discriminate against permit applications or approvals for land identified for habitat preserves. Plan participants could not deny or limit the provision of water, wastewater, or other utility services to habitat land, nor could they remove such land from utility service areas. Plan participants could not implement a regional plan or apply for a federal permit if a species protected by the regional plan was removed from the endangered list or if the Endangered Species Act was repealed.

Notification of landowners. Plan participants would have to notify in writing each owner of land identified as a habitat preserve in a regional plan. The written notification would have to include:

- the name and address of the landowner;
- the tax identification and parcel numbers of the potential habitat land;
- an explanation of the designation or possible designation of the potential habitat land;

- the names, addresses, phone numbers, and group designations of the members of the citizens advisory committee;
- identification of agents or employees of the plan participant who could provide information about the regional plan;
- the date of the next meeting of the citizens advisory committee or the plan participant regarding the regional plan; and
- the status of the regional plan.

Notice and hearing requirements. Plan participants would have to hold a public hearing on the proposed plan in the county where the participant was located. The participants would have to publish a notice in the newspaper of largest circulation at least 30 days before the public hearing. The notice would have to include the time and place of the public hearing and a brief description of the proposed plan. Plan participants could not adopt any aspect of a regional plan, including a regulation, budget, or fee schedule, until they had complied with the notice and hearing requirements listed above.

Citizens advisory committees. Plan participants would have to establish a citizens advisory committee to help prepare each regional plan, including applications for federal permits. All meetings and records used by these committees would be subject to open meetings and open records laws.

The Texas Parks and Wildlife Commission would appoint one voting member to each citizens advisory committee. The greater of four members or 33 percent of a committee would have to own undeveloped or agricultural land in the regional plan area. Landowner representatives on a committee could not work for any governmental entity, and at least half of the landowner representatives could not be affiliated with any commonly recognized environmental group.

Biological review. The commission and landowners from the citizens advisory committee would have to establish a biological advisory team to calculate the potential harm to endangered species to be protected under a regional plan and the size and configuration of habitat preserves. The amount of land needed for habitat preserves under a regional plan would have to be based on the amount of harm suffered by each protected species. Meetings and records of advisory teams would be subject to open meetings and open records laws.

Filing of grievances. Citizens advisory committee members could file grievances with the commission if they felt that a regional plan they were working on was being developed in violation of the bill's provisions. The commission would review the grievance and could dismiss the grievance if it had no merit. The commission would have to hold a public hearing and take testimony on the grievance if it had merit. The commission would have 30 days after taking testimony to approve or dismiss the grievance. If the grievance was approved, the commission would have to direct the plan participants to amend the plan to comply with the bill's provisions.

Plan participants could not apply for a federal permit if a grievance was pending before the commission or until the plan was modified to conform with the recommendations of the commission after a grievance had been approved. Individuals who filed a grievance could not file a subsequent grievance, and no other member of the advisory committee could file a subsequent grievance for the same plan.

CSHB 430 would require local governments to consult with the Texas Parks and Wildlife Department when developing conservation agreements with the U.S. Department of the Interior, unless the agreement related to a federal permit under the Endangered Species Act, such as regional habitat conservation plans.

The bill would take effect September 1, 1999. It would apply only to habitat conservation plans and regional habitat conservation plans established after January 1, 1999. The provisions that would prevent changes to governmental regulations or to the prior designation of the land as a habitat preserve from affecting the value of the land would apply to any regional plan for which a federal permit was issued before September 1, 1999.

SUPPORTERS SAY:

The development of the Balcones Canyonland Conservation Program has identified serious problems with the current laws for developing regional habitat conservation programs. The BCCP was created without the input of property owners whose land was identified for habitat preserves. The plan was developed in private meetings, without supervision by state government or by the public under open meetings or open records laws.

The plan has proceeded very slowly because plan participants have been unable to fund land purchases up front. Landowners are stuck in a regulatory

limbo while their property values decline because their land has been identified for acquisition under the BCCP. The plan participants have been unwilling to pay the fair market value for habitat land in several cases. The decrease in land values caused by governmental delays has made the land more affordable for governmental acquisition.

CSHB 430 would ensure that private property rights are protected during the development of regional plans. The bill would require regional plans to be developed with the full participation of the affected landowners, under the supervision of the state and the public. It would require just compensation for the acquisition of private land, as required by the U.S. Constitution, at the fair market value it would be worth if no endangered species were present on the land. It would restore regulatory certainty to a process that has jeopardized the rights of many property holders and would prevent such problems from occurring in the future.

Regional habitat conservation plans under current law penalize landowners with endangered species on their property. These plans create fear and uncertainty among landowners who are afraid of losing their land to the public sector without receiving fair compensation. Many property owners would prefer to hide the existence of endangered species on their land by any means necessary rather than expose themselves to the uncertainties of government regulation of their land.

CSHB 430 would provide an incentive for landowners to protect endangered species and to participate in regional plans through regulatory certainty, fair and timely compensation, and public input into the development process. The bill would strike a balance between the need to protect wildlife and the need to protect private property rights. Regional plans created under this bill would be popular with property owners and environmentalists alike. The bill is supported by private property owners who are active in the movement to protect wildlife and to preserve natural habitats.

OPPONENTS SAY:

Some provisions of CSHB 430 could violate federal law. Limiting the number of landowners on citizens advisory committees who could be “affiliated with” environmental groups could violate the civil rights of landowners in a regional plan area. The restriction against landowner committee members who work for *any* governmental agency also could be illegal under federal law. These

provisions would discriminate against landowners because of their occupations and their personal beliefs.

The four-year time limit for acquiring all habitat land in a regional plan is too restrictive. The withdrawal of a single landowner from a regional plan or the inability to agree to terms with a single landowner could eliminate the entire plan. Regional plans need some flexibility within the time allotted to acquire land to account for individual exceptions in the development process.

The provisions that would require species to be endangered to qualify for a regional plan and that would terminate a regional plan if a species were removed from the endangered list are short-sighted. Local governments would not be able to develop regional plans designed to prevent species from becoming endangered. If a species were removed from the endangered list but became endangered again later, it could be very hard to restore the former habitat if development had occurred on formerly protected land.

The bill would limit the development of regional plans to the acquisition of habitat land. Some regional plans might require other forms of land-use change that the bill would not cover. For example, a regional plan for preserving habitat in areas governed by the Edward Aquifer Authority could require changes in the use of groundwater and surface water. The bill would not give local governments the authority to develop plans based on water-use changes, which could hurt efforts to protect endangered species.

CSHB 430 would create disincentives for the use of regional habitat conservation plans. Regional plans are more cost-efficient and provide better species protection over an entire habitat area than do individual habitat plans. The bill would restrict the ability of local governments to use regional plans, which could increase the costs for establishing habitat preserves and reduce their effectiveness.

NOTES:

The committee substitute added the section that would allow citizens advisory committee members to file grievances against regional plans. It removed language that would have terminated automatically any regional plan in which the plan participants did not acquire all of the land identified for habitat preserves within the four-year deadline.

The substitute also removed the requirement for regional plans to be reviewed and approved by the commission, including reviews of the calculation of harm used in the plan and of the size and configuration of habitat preserves. It also removed the requirement that any other conservation plans developed between local governments and the U.S. Department of the Interior be approved by the commission.

The substitute removed a number of requirements for regional plans that received a federal permit between January 1 and September 1, 1999.

The companion bill, SB 1272 by Wentworth, passed the Senate on April 23 and was reported favorably, without amendment, by the House Land and Resource Management Committee on May 3, making it eligible to be considered in lieu of HB 430.