

AN ACT

relating to endangered species habitat conservation and to the creation of a board to oversee and guide the state's coordinated response to federal actions regarding endangered species.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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

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 chapter, 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 a 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 the provisions of Section 490E.004(c), 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:

(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 Chapter 490E, 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;

(B) affected landowners;

(C) conservation interests;

(D) business interests affected by the activity;

and

(E) mineral owners.

Sec. 490F.004. HABITAT PROTECTION AND RESEARCH FUND. (a)

1 The habitat protection and research fund is held by the comptroller  
2 inside the treasury and consists of money appropriated to the fund,  
3 interest earned on the investment of money in the fund, and gifts  
4 and grants made to the fund. This fund does not apply to activities  
5 related to species proposed for listing under the Endangered  
6 Species Act prior to September 1, 2013.

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

9 (1) provide grants to institutions for research into  
10 candidate, threatened, and endangered species;

11 (2) employ research personnel dedicated to research  
12 described by Subdivision (1); and

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

15 (c) Private money contributed to the habitat protection  
16 fund under Section 403.452 is held by the comptroller outside the  
17 treasury.

18 (d) Private funds collected pursuant to a mitigation plan  
19 shall be held only by the comptroller outside the treasury for the  
20 use prescribed by the plan.

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

25 Sec. 490F.005. CONFIDENTIAL INFORMATION. Information  
26 collected under this chapter by an agency, or an entity acting on  
27 the agency's behalf, from a private landowner or other participant

1 or potential participant in a habitat conservation plan, proposed  
2 habitat conservation plan, candidate conservation plan, or  
3 proposed candidate conservation plan is confidential and exempt  
4 from disclosure under Chapter 552 if the information relates to the  
5 specific location, property owner identification, species  
6 identification, or quantity of any animal or plant life at a  
7 specific location for which a plan is under consideration or  
8 development or has been established under this chapter.  
9 Information may be disclosed to a state agency or state officer upon  
10 signature of a confidentiality agreement, but may not be disclosed  
11 to a federal agency.

12 SECTION 2. Chapter 490E, Government Code, is amended by  
13 adding Section 490E.000 to read as follows:

14 Sec. 490E.000. DUTIES. The task force on economic growth  
15 and endangered species:

16 (1) shall select the holder of a federal permit issued  
17 in connection with a habitat conservation plan, candidate  
18 conservation plan, or similar plan, authorized or required by  
19 federal law in connection with a candidate species or endangered  
20 species that is to be held by a state agency; and

21 (2) may coordinate the comments, positions and  
22 response to listings and potential listings of endangered species  
23 for state agencies.

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

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

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

16           (b) The position of presiding officer rotates among the  
17 statewide elected members specified in Subsection (a) regardless of  
18 who occupies the named office at the time of the rotation. The  
19 position of chair rotates every two years in the order listed in  
20 Subsection (a), beginning with the comptroller. [~~The comptroller~~  
21 ~~is the presiding officer of the task force.~~]

22           SECTION 4. Section 490E.004, Government Code, is amended by  
23 amending Subsection (b) and adding Subsections (c) and (d) to read  
24 as follows:

25           (b) If requested by a landowner, other person in this state,  
26 or a local government or a state official, the task force may review  
27 state and local governmental efforts to address endangered species

1 issues and provide recommendations to make those efforts more cost  
2 effective. ~~[The task force shall consider all available options as~~  
3 ~~part of its recommendations. The options considered must include:~~

4 ~~[(1) fee simple acquisition of land,~~

5 ~~[(2) conservation easements,~~

6 ~~[(3) use of land owned by local governments or this~~  
7 ~~state,~~

8 ~~[(4) recovery crediting; and~~

9 ~~[(5) all relevant federal programs.]~~

10 (c) If determined by the task force, a state agency that is  
11 represented on the task force may hold a permit issued under the  
12 federal Endangered Species Act.

13 (d) The permit holder shall inform members of the task force  
14 of any mitigation plan, including costs, at least 10 days prior to  
15 the plan being submitted to the U.S. Fish and Wildlife Service for  
16 approval.

17 SECTION 5. Section 490E.005, Government Code, is amended by  
18 amending Subsections (a) and (c) and adding Subsection (f) to read  
19 as follows:

20 (a) With the advice of the task force, the presiding officer  
21 shall ~~[controller may]~~ create at least one advisory committee for  
22 each species ~~[committees]~~ to assist the task force with its work.

23 Of the members of an advisory committee:

24 (1) one-fourth ~~[one-third]~~ must be representatives of  
25 affected landowners;

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

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

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

5           (c) The presiding officer [~~comptroller~~] shall designate one  
6 member of an advisory committee as interim presiding officer for  
7 the purpose of calling and conducting the initial meeting of the  
8 committee.

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

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

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

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

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

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

21           Sec. 490E.008. ADMINISTRATIVE SUPPORT. The presiding  
22 officer's [~~comptroller's~~] office shall provide administrative  
23 support and maintain a public website for [~~to~~] the task force.

24           SECTION 7. Chapter 490E, Government Code, is amended by  
25 adding Section 490E.009 to read as follows:

26           Sec. 490E.009. ATTORNEY GENERAL. Notwithstanding Section  
27 402.045, the attorney general, at the request of the task force,

1 shall provide legal advice to the task force.

2 SECTION 8. Section 403.452, Government Code, is amended by  
3 adding Subsection (e) to read as follows:

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

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

11 SECTION 10. The Task Force on Economic Growth and  
12 Endangered Species, in collaboration with three members of the  
13 House State Affairs Committee appointed by the speaker and three  
14 members of the Senate Natural Resources Committee appointed by the  
15 lieutenant governor, and one stakeholder representing landowner  
16 interests appointed by the governor, shall conduct a study to  
17 determine state policies to defend against the overreaching  
18 inclusion of species on the Endangered Species List by the United  
19 States Fish and Wildlife Service. The study shall be submitted to  
20 the governor, lieutenant governor, speaker, and members of the  
21 legislature not later than December 1, 2014.

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

26 SECTION 12. An approved conservation plan, federal permit  
27 issued, an application for a federal permit submitted, or a



1 conservation agreement entered into prior to the effective date of  
2 this bill is governed by the law in effect at the time the permit was  
3 acquired or the plan was approved, and the former law continues in  
4 effect for the purpose of full implementation of the conservation  
5 plan, including the authority to apply for a federal permit in the  
6 event of a listing decision for the species covered by the  
7 conservation plan.

8       SECTION 13. This Act takes effect September 1, 2013.

H.B. No. 3509

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President of the Senate

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Speaker of the House

I certify that H.B. No. 3509 was passed by the House on May 10, 2013, by the following vote: Yeas 118, Nays 16, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 3509 on May 24, 2013, by the following vote: Yeas 134, Nays 10, 2 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 3509 was passed by the Senate, with amendments, on May 22, 2013, by the following vote: Yeas 27, Nays 4.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor