

ALEC EXPOSED

"ALEC" has long been a secretive collaboration between Big Business and "conservative" politicians. Behind closed doors, they ghostwrite "model" bills to be introduced in state capitols across the country. This agenda-underwritten by global corporations—includes major tax loopholes for big industries and the super rich, proposals to offshore U.S. jobs and gut minimum wage, and efforts to weaken public health, safety, and environmental protections. Although many of these bills have become law, until now, their origin has been largely unknown. With **ALEC EXPOSED**, the Center for Media and Democracy hopes more Americans will study the bills to understand the depth and breadth of how big corporations are changing the legal rules and undermining democracy across the nation.

ALEC's Corporate Board --in recent past or present

- AT&T Services, Inc.
- centerpoint360
- UPS
- Bayer Corporation
- GlaxoSmithKline
- Energy Future Holdings
- Johnson & Johnson
- Coca-Cola Company
- PhRMA
- Kraft Foods, Inc.
- Coca-Cola Co.
- Pfizer Inc.
- Reed Elsevier, Inc.
- DIAGEO
- Peabody Energy
- Intuit, Inc.
- Koch Industries, Inc.
- ExxonMobil
- Verizon
- Reynolds American Inc.
- Wal-Mart Stores, Inc.
- Salt River Project
- Altria Client Services, Inc.
- American Bail Coalition
- State Farm Insurance

For more on these corporations, search at www.SourceWatch.org.

DID YOU KNOW? Corporations VOTED to adopt this. Through ALEC, global companies work as "equals" in "unison" with politicians to write laws to govern your life. Big Business has "a VOICE and a VOTE," according to newly exposed documents. **DO YOU?**

Home → Model Legislation → Energy, Environment, and Agriculture

Protecting Property Rights to Facilitate

Species Conservation Act

Did you know the trade group for the gas industry was a corporate co-chair in 2011?

An act relating to the authority of a political subdivision to prepare and implement a regional habitat conservation plan or habitat conservation plan or to enter into a conservation agreement.

Be it enacted by the State of _____ :

Section 1. PURPOSE.

The purpose of this Act is to:

- (A) establish the requirements for and authority of a governmental entity to regulate wildlife through the development, financing, and implementation of a regional habitat conservation plan or a habitat conservation plan;
- (B) encourage governmental entities to use the authority under this Act to develop and implement habitat conservation plans instead of regional habitat conservation plans;
- (C) coordinate, to the greatest extent practicable, habitat preserves within lands set aside or to be set aside under local, state, or federal laws or regulations;
- (D) prohibit plan participants from devaluing land containing endangered species or endangered species habitat through plan participant actions; and
- (E) require plan participants of existing regional habitat conservation plans to comply with the requirements of this Act so that existing regional habitat conservation plans become habitat conservation plans as quickly as possible.

Section 2. DEFINITIONS

In this chapter:

- (A) "Biological advisory team" means three or more professional biologists retained to provide biological guidance to plan participants.
- (B) "Department" means the state department with jurisdiction over wildlife management.
- (C) "Endangered species" means a species listed by the United States Department of the Interior as endangered or threatened under the federal act.

(D) "Federal act" means the federal Endangered Species Act of 1973 (16 U.S.C. Section 1531 et seq.), as amended.

(E) "Federal permit" means a permit issued under Section 7 or 10(a) of the federal act.

(F) "Governmental entity" means a political subdivision of the state, including municipalities; and counties.

(G) "Habitat conservation plan" means a plan or program to protect endangered species by habitat preserves or other protection strategies developed in order to obtain a federal permit:

- (1) that does not require the regulation of non-habitat preserve land; and
- (2) for which the land to be used as habitat preserves, at the time of application for the federal permit:
 - (a) is owned by a plan participant; or
 - (b) is subject to a contract agreed to by each owner of land in the habitat preserve or proposed habitat preserve providing that all or part of the owner's land be used or managed as a habitat preserve.

(H) "Habitat preserve" means land set aside or managed for the protection of endangered species under a federal permit.

(I) "Harm" means significant habitat modification or degradation that, by significantly impairing essential behavioral patterns, including breeding, feeding, sheltering, or migrating, is the proximate cause of:

- (1) the death of a member of an endangered species; or
- (2) the physical injury of a member of an endangered species.

(J) "Land development standards" means rules or ordinances regulating the development of land, including impervious cover limitations, building setbacks, zoning, floor-to-area ratios, building coverage, water quality controls and regulations, landscaping, building height, development setbacks, compatibility standards, traffic analyses, driveway cuts, impact fees, and transfer of development rights. The term does not include fire or building codes or restrictions on the withdrawal of groundwater.

(K) "Mitigation fee" means a charge or in-kind contribution that is based on the amount of harm and is paid or provided to a plan participant in exchange for mitigation credit to be used to comply with the federal act.

(L) "Plan participant" means a governmental entity that develops, attempts to develop, adopts, approves, or participates in a regional habitat conservation plan or habitat conservation plan.

(M) "Regional habitat conservation plan" means a plan or program to protect endangered species by habitat preserves or other protection strategies developed in order to obtain a federal permit that requires the acquisition or regulation of land or interests in land not owned by a plan participant at the time of application for a federal permit.

Section 3. FEDERAL-STATE AGREEMENTS

(A) Any conservation agreement between a political subdivision of the state and the United States Department of the Interior must be developed in consultation with the department.

(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

Section 4. AUTHORITY OF DEPARTMENT OR POLITICAL SUBDIVISION.

(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 Act, the department or a political subdivision may participate in the study and preparation for and creation of a regional habitat conservation plan.

(C) Subject to this Act, a political subdivision, including a municipality acting within its corporate limits or its extraterritorial jurisdiction, 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, may:

- (1) purchase land, easements, or leases; and
- (2) enter into an agreement with a landowner to establish alternative land development standards for a tract of land.

(D) A plan participant may 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 Act 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 section.

(E) A governmental entity may not implement a regional habitat conservation plan or apply for a federal permit in conjunction with a regional habitat conservation plan if:

- (1) the federal act is repealed; or
- (2) the endangered species that are subject to conservation and protection under the federal permit cease to be listed as endangered or threatened by the United States Department of the Interior.

Section 5. LIMITATION OF POWERS.

(A) A governmental entity may not impose 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. This subsection does not limit the authority of a governmental entity to adopt a rule, regulation, or ordinance restricting the withdrawal of groundwater.

(B) A governmental entity may not discriminate against a permit application, permit approval, or the provision of utility service for land that:

- (1) is or has been designated as habitat preserve or potential habitat preserve in a regional habitat conservation plan or habitat conservation plan;
- (2) is designated as critical habitat under the federal act; or
- (3) has endangered species or endangered species habitat.

(C) A governmental entity may not deny or limit 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. For purposes of this subsection, a governmental entity may not remove land from its water or wastewater utility service areas after the date established under Section 9(B).

(D) A governmental entity may not, as a condition for the issuance of a permit, approval, or service, require a person to:

- (1) pay a mitigation fee to a plan participant;

- (2) set aside, lease, or convey land as habitat preserve; or
- (3) pay a mitigation fee for land set aside or restricted from development under local, state, or federal law or regulation.

(E) A governmental entity may not require landowners to modify existing, normally accepted agricultural practices in the creation of a habitat conservation plan.

Section 6. BIOLOGICAL REVIEW; CRITERIA.

(A) A regional habitat conservation plan, including any mitigation fee, shall be based on the amount of harm to each endangered species to be protected under the regional habitat conservation plan.

(B) The size of proposed habitat preserves shall be based solely on the amount of harm to the endangered species to be protected in the regional habitat conservation plan.

(C) The plan participants, together with the commission and the landowner members of the citizens advisory committee, shall appoint a biological advisory team. At least one member shall be appointed by the commission and one member by the landowner members of the citizens advisory committee. The member appointed by the commission serves as presiding officer of the team. The team shall assist in:

- (1) the calculation of harm to the endangered species; and
- (2) the sizing and configuring of the habitat preserves.

(D) Meetings of the biological advisory team and all work product of the biological advisory team are open to the public.

Section 7. CITIZENS ADVISORY COMMITTEE.

(A) The plan participants shall appoint a citizens advisory committee to assist in preparing the regional habitat conservation plan and the application for a federal permit.

(B) At least four members or 33 percent of the citizens advisory committee, whichever is greater in number, must own undeveloped land or land in agricultural use in the regional habitat conservation plan area. A landowner member may not be an employee or elected official of a plan participant or any other local, state, or federal governmental entity.

(C) Not later than the 90th day after the initial identification of the proposed preserve system for the regional habitat conservation plan, the plan participants shall appoint one additional landowner, who owns land within the proposed habitat preserve system, to the citizens advisory committee. The additional landowner member must comply with subsection (B).

(D) The commission shall appoint one representative to the citizens advisory committee. The commission's representative is a voting member of the committee.

Section 8. DEVELOPMENT OF REGIONAL HABITAT CONSERVATION PLAN.

(A) 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 state laws regarding open meetings.

(B) All data, reports, and other information regarding the regional habitat

conservation plan, including field notes, lab notes, and any other information relied on by the biological advisory team, are subject to state open records laws.

(C) Not later than the 60th day after the initial identification of the proposed habitat preserve system for the federal permit, the plan participants shall notify in writing each owner of land identified by the plan participants as habitat preserve or potential habitat preserve. The plan participants shall use the county tax rolls to identify the owners of land identified as habitat preserve or potential habitat preserve. The written notice must include at least the following information:

- (1) the tax identification and parcel numbers;
- (2) the owner's name and address;
- (3) an explanation of the designation or possible designation of the tract as habitat preserve or potential habitat preserve under the regional habitat conservation plan;
- (4) identification of the citizens advisory committee members, including telephone numbers, addresses, and the group that each committee member represents;
- (5) identification of employees or agents of plan participants who can provide information about the regional habitat conservation plan;
- (6) the date of the next citizens advisory committee meeting or plan participant meeting regarding the regional habitat conservation plan; and
- (7) a description of the status of the regional habitat conservation plan.
- (8) a prepaid postcard for the landowner to mail back to signify they received the written notice.

(D) If the landowner has not responded to the plan participants within forty days signifying that they have received the written notice, the plan participants shall show due diligence in attempting to contact the owner with the written notice.

Section 9. PRESERVE ACQUISITION.

(A) The designation of a tract of land as habitat preserve or potential habitat preserve or the presence of endangered species or endangered species habitat may not be considered in determining the fair market value of the property for acquisition as a habitat preserve.

(B) A change to plan participant rules and regulations, including land development standards, 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 may not be considered in determining the fair market value of the land for acquisition as a habitat preserve.

(C) The plan participants shall make offers based on fair market value to the landowners for the acquisition of fee simple or other interest in land designated in the regional habitat conservation plan as habitat preserve not later than two years after the issuance of the federal permit or three years after the initial application for the federal permit, whichever is earlier. Acquisition of all habitat preserves must be completed not later than the fourth anniversary of the date on which the federal permit was issued. A plan participant subject to this subsection who does not meet an applicable deadline shall file an application to amend the federal permit to remove the nonacquired habitat preserve land from the regional habitat conservation plan as a habitat preserve not later than the 60th day after the fourth anniversary of the date on which the federal permit was issued.

Section 10. NOTICE AND HEARING REQUIREMENTS.

(A) A plan participant must 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 Act.

(B) The plan participant, individually or through interlocal contract, shall publish a

notice, including a brief description of the proposed action and the time and place of a public hearing on the proposed action, not later than the 30th day before the public hearing in the newspaper of largest general circulation in the county in which the plan participant proposing the action is located.

(C) A public hearing on the proposed action shall be held at the time and place specified in the notice.

Section 11. GRIEVANCE WITH DEVELOPMENT OF REGIONAL HABITAT CONSERVATION PLAN.

(A) An individual appointed to a citizens advisory committee under Section 7(B) may file a grievance with the commission regarding the development of a regional habitat conservation plan under this Act if the individual believes that the plan is being developed in violation of this Act. The individual filing the grievance must have been a member of the citizens advisory committee for the plan named in the grievance.

(B) A grievance must be filed under this section not later than the 60th day after the date the plan is approved by the plan participants. The grievance must cite each provision of this Act alleged to have been violated during the development of the plan and must describe each action alleged to have violated this Act.

(C) The commission shall review a grievance filed under this section to determine whether the plan is being developed in compliance with this Act. If after reviewing the grievance the commission finds that the grievance has no merit, the commission may dismiss the grievance. If the commission finds that the grievance does have merit, the commission must hold a public hearing in accordance with {insert state code reference}. The commission shall take testimony from each plan participant and from the individual filing the grievance. On conclusion of testimony, the commission shall vote on whether to approve or dismiss the grievance or to schedule a public hearing not later than the 30th day after the conclusion of the initial public hearing and to vote after the conclusion of that hearing whether to approve or dismiss the grievance.

(D) If the commission approves the grievance, the commission shall instruct the plan participant or participants to amend the plan so that it will comply with this Act. The plan participant may not submit an application for a federal permit until the commission is satisfied that its instructions to amend the plan to comply with this Act have been carried out.

(E) A plan participant in a plan that is the subject of a grievance filed with the commission may not submit an application for a federal permit before the commission:

(1) has dismissed the grievance; or

(2) if the commission approves the grievance, has determined that the commission's recommended amendments to the plan have been made.

(F) If an individual files a grievance under this section, that individual may not file a subsequent grievance.

Section 12. EXISTING CONSERVATION PLANS

(A) This Act applies only to a regional habitat conservation plan for which an application for a federal permit was submitted on or after _____.

(B) A political subdivision may continue to enforce a regional habitat conservation plan that has been formally approved by the United States Fish and Wildlife Service.

Section 13. {Severability} [Insert Severability Clause]

Section 14. {Repeal} *[Insert Repealer Clause]*

Were your laws repealed?

Section 15. {Effective Date} *[Insert Effective Date]*

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