

BILL ANALYSIS

C.S.H.B. 23
By: Swinford
Government Reform
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, the Texas Board of Pardons and Paroles (TBPP) has a separate policy board. CSHB 23 reorganizes TBPP, replacing the current 18-member board, including the policy board, with a seven-member board led by a presiding officer. It requires TBPP to employ parole commissioners to participate in panels along with TBPP members to determine release, conditions of parole, and modification and withdrawal or mandatory supervision.

RULEMAKING AUTHORITY

It is the Committee's opinion that rulemaking authority is expressly granted to the Texas Board of Pardons and Paroles in SECTION 7 (Section 508.036, Government Code) of this bill. Rulemaking authority previously granted to the Texas Board of Pardons and Paroles Policy Board is transferred to the Texas Board of Pardons and Paroles in SECTIONS 12 (Section 508.0441, Government Code) and 16 (Section 508.082, Government Code). Rulemaking authority previously granted to the Texas Board of Pardons and Paroles Policy Board is transferred to the Texas Board of Pardons and Paroles and its presiding officer in SECTION 1 (Section 492.0131, Government Code) of this bill.

ANALYSIS

SECTION 1. Amends Section 492.0131, Government Code, to make conforming changes.

SECTION 2. Amends Section 508.001, Government Code, by amending Subdivision (8) and adding Subdivision (10), to define "parole commissioner" and "presiding officer" and delete the definition of "policy board."

SECTION 3. Amends Section 508.031(a), Government Code, to provide that the Texas Board of Pardons and Paroles (TBPP) consists of seven, rather than 18, members appointed by the governor with the advice and consent of the senate.

SECTION 4. Amends Section 508.032, Government Code, by adding subsections (c), (d), and (e) to add that a person who is a former employee of the Texas Department of Criminal Justice may not serve on the Board of Pardons and Paroles before the second anniversary of the date the person terminated employment with TDCJ. At any time, not more than three members of the Board may be former employees of TDCJ. Previous service as a Board member is not considered to be employment with TDCJ for these purposes.

SECTION 5. Amends Section 508.034, Government Code, as follows:

(a) Provides that it is a ground for removal from TBPP that a member is absent from more than half of the regularly scheduled meetings that the member is eligible to attend during each calendar year, except when the absence is excused by the presiding officer of TBPP (presiding officer), rather than by majority vote of TBPP.

(b) Deletes the text of this subsection regarding removal from the policy board of TBPP. Creates this subsection from the existing text of Subsection (c) and deletes a reference to the policy board.

- (c) Created from the existing text of Subsection (d) with the deletion of a reference to the policy board.
- (d) Created from the existing text of Subsection (e).
- (e) Created from the existing text of Subsection (f). Provides that it is a ground for removal from the TBPP that a member fails to comply with policies or rules adopted by TBPP, rather than the policy board.

SECTION 6. Amends Section 508.035, Government Code, by amending Subsection (c) and adding Subsection (d), as follows:

- (c) Deletes a reference to the policy board.
- (d) Authorizes the presiding officer to perform certain functions.

SECTION 7. Amends Section 508.036, Government Code, as follows:

Sec. 508.036. New heading: GENERAL ADMINISTRATIVE DUTIES. (a) Sets forth duties of the presiding officer, including developing and implementing policies that clearly separate the policy-making responsibilities of TBPP and the management responsibilities of the board administrator, parole commissioners, and the staff of TBPP, and establishing caseloads and required work hours for members of TBPP and parole commissioners. Deletes text regarding the governor's designation of members to serve on the policy board, granting rulemaking authority to the policy board, and assigning duties to the policy board. Makes conforming changes.

(b) Sets forth requirements for TBPP, including to adopt rules relating to the decision making processes used by TBPP and parole panels; to prepare information of public interest describing the functions of TBPP; to comply with certain laws; and to prepare an annual report.

(c) Requires the board administrator to prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to TBPP's programs and services.

(d) Provides that TBPP, in performing its duties, is subject to the open meetings law, Chapter 551, and the administrative procedure law, Chapter 2001. Provides that this subsection does not affect the provisions of Section 2001.223 exempting hearings and interviews conducted by TBPP or the pardons and paroles division (division) from Section 2001.038 and Subchapters C-H, Chapter 2001.

SECTION 8. Amends Section 508.0362, Government Code, as follows:

(a) Prohibits a parole commissioner employed by the board from voting or deliberating on a matter described by Section 508.0441 until the person completes at least one course of a training program that complies with this section. Makes conforming changes.

(b) Makes conforming changes.

(c) Makes a conforming change.

SECTION 9. Amends Section 508.040(a), Government Code, to provide that the presiding officer, rather than the policy board, is responsible for the employment and supervision of certain persons, including parole commissioners and personnel to assist in hearing matters. Makes conforming and nonsubstantive changes.

SECTION 10. Amends Section 508.041, Government Code, to make conforming changes.

SECTION 11. Amends Section 508.042, Government Code, as follows:

Sec. 508.042. New heading: TRAINING PROGRAM FOR MEMBERS AND PAROLE COMMISSIONERS.

(a) Makes conforming changes.

(b) Prohibits a new parole commissioner from participating in a vote of a panel until the commissioner completes the training program. Provides that this subdivision does not apply to a new parole commissioner who as a board member completed the training program.

SECTION 12. Amends Subchapter B, Chapter 508, Government Code, by amending Section 508.044 and adding Section 508.0441, as follows:

Sec. 508.044. Makes nonsubstantive changes.

Sec. 508.0441. RELEASE AND REVOCATION DUTIES. Created from the existing text of Section 508.044. Authorizes the presiding officer, rather than the policy board, to provide a written plan for the administrative review of actions taken by a parole panel by a review panel, rather than the entire membership or by a subset of the entire membership of TBPP. Makes conforming and nonsubstantive changes.

SECTION 13. Amends Section 508.045, Government Code, to require the presiding officer to designate the composition of each panel, and authorizes the presiding officer to designate panels composed only of TBPP members, composed only of parole commissioners, or composed of any combination of members and parole commissioners. Makes conforming and nonsubstantive changes.

SECTION 14. Amends Section 508.047(a), Government Code, to make a conforming change.

SECTION 15. Amends Section 508.049, Government Code, to make conforming changes.

SECTION 16. Amends Section 508.082, Government Code, to make conforming changes.

SECTION 17. Amends Section 508.141(g), Government Code, to make conforming changes.

SECTION 18. Amends Section 508.144(b), Government Code, to make conforming changes.

SECTION 19. Amends Section 508.153(b), Government Code, to make conforming and nonsubstantive changes.

SECTION 20. Amends Section 508.281(a), Government Code, to make a conforming change.

SECTION 21. Amends Section 508.313(c), Government Code, to make a conforming change.

SECTION 22. Repealer: Section 508.0361 (Policy Board: General Administrative Provisions), Government Code.

SECTION 23. (a) Requires the governor to appoint new members to TBPP on or before January 1, 2004, and provides that the terms of members serving on December 31, 2003, expire on the appointment of the new members. Authorizes but does not require the governor to appoint as new members persons who served on TBPP before January 1, 2004.

(b) Requires the governor, of the new members of TBPP, to appoint two to serve terms expiring February 1, 2005, two to serve terms expiring February 1, 2007, and three to serve terms expiring February 1, 2009. Provides that on the expiration of the terms of the initial members of the new TBPP, the term of a member appointed by the governor is six years.

(c) Provides that, on December 1, 2003, a rule of the policy board is a rule of TBPP.

SECTION 24. Notwithstanding Section 508.040(a), Government Code, as amended by this Act, until January 1, 2004, the presiding officer of the Board of Pardons and Paroles shall exercise responsibilities imposed by Section 508.040(a) with the advice and consent of the Board of Pardons and Paroles policy board.

SECTION 25. Legislative intent statement: members who are serving on the Board of Pardons and Paroles on May 1, 2003, or who on that date had been nominated for board membership and were awaiting confirmation or had been recently confirmed by the 78th Legislature, be offered the first opportunity to be hired as parole commissioners.

EFFECTIVE DATE

December 1, 2003

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute modifies the original by removing provisions which had required that in a capital case, the members of the Board of Pardons and Paroles shall perform the members' duties in clemency matters by meeting as a body or by a telephone conference call, and that all proceedings by telephone conference call, other than deliberations of the board, shall be recorded and made available to the public. The substitute also removes provisions which required the Board of Pardons and Paroles to deliberate privately, but each board member to announce publicly and in writing the member's individual decision as to whether to recommend clemency and the reasons for that recommendation.

The substitute further modifies the original by adding provisions to specify that a former employee of the Texas Department of Criminal Justice (TDCJ) may not serve on the Board of Pardons and Paroles before the second anniversary of the date the person terminated employment with TDCJ. The substitute specifies that at any time, not more than three members of the Board may be former employees of TDCJ. Previous service as a Board member is not considered to be employment with TDCJ for these purposes.