

By: Whitmire

S.B. No. 1678

A BILL TO BE ENTITLED

AN ACT

relating to the organization and duties of the Board of Pardons and Paroles.

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

SECTION 1. Section 508.001, Government Code, is amended by amending Subdivision (8) and adding Subdivision (10) to read as follows:

(8) "Parole commissioner" means a person employed by the board to perform the duties described by Section 508.0441 [~~"Policy board" means the Board of Pardons and Paroles Policy Board~~].

(10) "Presiding officer" means the presiding officer of the Board of Pardons and Paroles.

SECTION 2. Subsection (a), Section 508.031, Government Code, is amended to read as follows:

(a) The board consists of seven [~~18~~] members appointed by the governor with the advice and consent of the senate.

SECTION 3. Section 508.034, Government Code, is amended to read as follows:

Sec. 508.034. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the board that a member:

(1) does not have at the time of taking office the qualification required by Section 508.032(b) for appointment to the board;

1 (2) is ineligible for membership under Section
2 508.033;

3 (3) is unable to discharge the member's duties for a
4 substantial part of the term for which the member is appointed
5 because of illness or disability; or

6 (4) is absent from more than half of the regularly
7 scheduled board or panel meetings that the member is eligible to
8 attend during each calendar year, except when the absence is
9 excused by ~~[majority vote of]~~ the presiding officer ~~[board]~~.

10 (b) ~~[It is a ground for removal from the board and the policy
11 board if a member of the policy board is absent from more than half
12 of the regularly scheduled policy board meetings that the member is
13 eligible to attend during each calendar year.]~~

14 ~~[(c)]~~ The board administrator or the board administrator's
15 designee shall provide to members of the board~~[, to members of the
16 policy board,]~~ and to employees, as often as necessary, information
17 regarding their qualification for office or employment under this
18 chapter and their responsibilities under applicable laws relating
19 to standards of conduct for state officers or employees.

20 (c) ~~[(d)]~~ The validity of an action of ~~[+~~

21 ~~[(1)]~~ the board or panel is not affected by the fact
22 that the action is taken when a ground for removal of a board member
23 exists~~[, and~~

24 ~~[(2) the policy board is not affected by the fact that
25 the action is taken when a ground for removal of a member of the
26 policy board exists].~~

27 (d) ~~[(e)]~~ If the general counsel to the board has knowledge

1 that a potential ground for removal exists, the general counsel
2 shall notify the presiding officer of the board of the potential
3 ground. The presiding officer shall notify the governor and the
4 attorney general that a potential ground for removal exists. If the
5 potential ground for removal involves the presiding officer, the
6 general counsel to the board shall notify the governor and the
7 attorney general that a potential ground for removal exists.

8 (e) [~~(f)~~] It is a ground for removal from the board that a
9 member fails to comply with policies or rules adopted by the
10 [~~policy~~] board.

11 SECTION 4. Section 508.035, Government Code, is amended by
12 amending Subsection (c) and adding Subsection (d) to read as
13 follows:

14 (c) The presiding officer reports directly to the governor
15 and serves as the administrative head of the [~~policy board and the~~]
16 board.

17 (d) The presiding officer may:

18 (1) delegate responsibilities and authority to other
19 members of the board, parole commissioners, or to employees of the
20 board;

21 (2) appoint advisory committees from the membership of
22 the board or from parole commissioners to further the efficient
23 administration of board business; and

24 (3) establish policies and procedures to further the
25 efficient administration of the business of the board.

26 SECTION 5. Section 508.036, Government Code, is amended to
27 read as follows:

1 Sec. 508.036. [~~POLICY BOARD: COMPOSITION,~~] GENERAL
2 ADMINISTRATIVE DUTIES. (a) The presiding officer [~~governor shall~~
3 ~~designate six members of the board to serve as the Board of Pardons~~
4 ~~and Paroles Policy Board. The governor shall designate the~~
5 ~~presiding officer of the board as one of the six members of the~~
6 ~~policy board, and the presiding officer of the board shall serve as~~
7 ~~presiding officer of the policy board. Service on the policy board~~
8 ~~is an additional duty of office for members appointed to the policy~~
9 ~~board.~~

10 [~~(b) Members of the board designated as members of the~~
11 ~~policy board serve on the policy board for six-year terms that are~~
12 ~~concurrent with their six-year terms on the board, with the service~~
13 ~~of two members expiring February 1 of each odd-numbered year.~~

14 [~~(c) The policy board~~] shall:

15 (1) develop and implement policies that clearly
16 separate the policy-making responsibilities of the board and the
17 management responsibilities of the board administrator, parole
18 commissioners, and the staff of the board [~~adopt rules relating to~~
19 ~~the decision-making processes used by the board and parole panels];~~

20 (2) establish caseloads and required work hours for
21 members of the board and parole commissioners [~~assign duties to~~
22 ~~members of the policy board that are in addition to the duties those~~
23 ~~members have in handling a caseload];~~

24 (3) update parole guidelines, assign precedential
25 value to previous decisions of the board relating to the granting of
26 parole and the revocation of parole or mandatory supervision, and
27 develop policies to ensure that members of the board and parole

1 commissioners use guidelines and previous decisions of the board
2 and parole commissioners in making decisions under this chapter;

3 (4) require members of the board and parole
4 commissioners to file activity reports[~~, on forms provided by the~~
5 ~~policy board,~~] that provide information on release decisions made
6 by members of the board and parole commissioners, the workload and
7 hours worked of the members of the board and parole commissioners,
8 and the use of parole guidelines by members of the board and parole
9 commissioners; and

10 (5) report at least annually to the governor and the
11 legislature on the [board] activities of the board and parole
12 commissioners, parole release decisions, and the use of parole
13 guidelines by the board and parole commissioners.

14 (b) The board shall:

15 (1) adopt rules relating to the decision-making
16 processes used by the board and parole panels;

17 (2) prepare information of public interest describing
18 the functions of the board and make the information available to the
19 public and appropriate state agencies;

20 (3) comply with federal and state laws related to
21 program and facility accessibility; and

22 (4) prepare annually a complete and detailed written
23 report that meets the reporting requirements applicable to
24 financial reporting provided in the General Appropriations Act and
25 accounts for all funds received and disbursed by the board during
26 the preceding fiscal year.

27 (c) The board administrator shall prepare and maintain a

1 written plan that describes how a person who does not speak English
2 can be provided reasonable access to the board's programs and
3 services.

4 (d) The board, in performing its duties, is subject to the
5 open meetings law, Chapter 551, and the administrative procedure
6 law, Chapter 2001. This subsection does not affect the provisions
7 of Section 2001.223 exempting hearings and interviews conducted by
8 the board or the division from Section 2001.038 and Subchapters
9 C-H, Chapter 2001.

10 SECTION 6. Section 508.0362, Government Code, is amended to
11 read as follows:

12 Sec. 508.0362. TRAINING REQUIRED. (a)(1) A person who is
13 appointed to and qualifies for office as a member of the board [~~or~~
14 ~~the policy board~~] may not vote, deliberate, or be counted as a
15 member in attendance at a meeting of the board [~~or policy board~~]
16 until the person completes at least one course of a training program
17 that complies with this section.

18 (2) A parole commissioner employed by the board may
19 not vote or deliberate on a matter described by Section 508.0441
20 until the person completes at least one course of a training program
21 that complies with this section.

22 (b) A training program must provide information to the
23 person regarding:

24 (1) the enabling legislation that created the board
25 [~~and the policy board~~];

26 (2) the programs operated by the board;

27 (3) the role and functions of the board and parole

1 commissioners;

2 (4) the rules of the board;

3 (5) the current budget for the board;

4 (6) the results of the most recent formal audit of the
5 board;

6 (7) the requirements of the:

7 (A) open meetings law, Chapter 551;

8 (B) open records law, Chapter 552; and

9 (C) administrative procedure law, Chapter 2001;

10 (8) the requirements of the conflict of interest laws
11 and other laws relating to public officials; and

12 (9) any applicable ethics policies adopted by the
13 [~~policy~~] board or the Texas Ethics Commission.

14 (c) A person appointed to the board [~~or policy board~~] is
15 entitled to reimbursement, as provided by the General
16 Appropriations Act, for the travel expenses incurred in attending
17 the training program regardless of whether the attendance at the
18 program occurs before or after the person qualifies for office.

19 SECTION 7. Subsection (a), Section 508.040, Government
20 Code, is amended to read as follows:

21 (a) The presiding officer is responsible for the employment
22 and supervision of [~~policy board shall employ and supervise~~]:

23 (1) parole commissioners;

24 (2) a general counsel to the board;

25 (3) [~~(2)~~] a board administrator to manage the
26 day-to-day activities of the board;

27 (4) [~~(3)~~] hearing officers;

1 (5) [~~4~~] personnel to assist in clemency and hearing
2 matters; and

3 (6) [~~5~~] secretarial or clerical personnel.

4 SECTION 8. Section 508.041, Government Code, is amended to
5 read as follows:

6 Sec. 508.041. DESIGNEE TRAINING; HANDBOOK. (a) The
7 [~~policy~~] board shall develop and implement:

8 (1) a training program that each newly hired employee
9 of the board designated to conduct hearings under Section 508.281
10 must complete before conducting a hearing without the assistance of
11 a board member or experienced parole commissioner or designee; and

12 (2) a training program to provide an annual update to
13 designees of the board on issues and procedures relating to the
14 revocation process.

15 (b) The [~~policy~~] board shall prepare and biennially update a
16 procedural manual to be used by designees of the board. The
17 [~~policy~~] board shall include in the manual:

18 (1) descriptions of decisions in previous hearings
19 determined by the [~~policy~~] board to have value as precedents for
20 decisions in subsequent hearings;

21 (2) laws and court decisions relevant to decision
22 making in hearings; and

23 (3) case studies useful in decision making in
24 hearings.

25 (c) The [~~policy~~] board shall prepare and update as necessary
26 a handbook to be made available to participants in hearings under
27 Section 508.281, such as defense attorneys, persons released on

1 parole or mandatory supervision, and witnesses. The handbook must
2 describe in plain language the procedures used in a hearing under
3 Section 508.281.

4 SECTION 9. Section 508.042, Government Code, is amended to
5 read as follows:

6 Sec. 508.042. TRAINING PROGRAM FOR MEMBERS AND PAROLE
7 COMMISSIONERS. (a) The [~~policy~~] board shall develop for board
8 members and parole commissioners a comprehensive training and
9 education program on the criminal justice system, with special
10 emphasis on the parole process.

11 (b) (1) A new member may not participate in a vote of the
12 board or a panel, deliberate, or be counted as a member in
13 attendance at a meeting of the board [~~or policy board~~] until the
14 member completes the program.

15 (2) A new parole commissioner may not participate in a
16 vote of a panel until the commissioner completes the program. This
17 subdivision does not apply to a new parole commissioner who as a
18 board member completed the program.

19 SECTION 10. Subchapter B, Chapter 508, Government Code, is
20 amended by amending Section 508.044 and adding Section 508.0441 to
21 read as follows:

22 Sec. 508.044. POWERS AND DUTIES OF BOARD. [~~(a)~~] A board
23 member shall give full time to the duties of the member's office,
24 including[-

25 [~~(b) In addition to performing the~~] duties imposed on the
26 board by the Texas Constitution and other law.

27 Sec. 508.0441. RELEASE AND REVOCATION DUTIES. (a) Board[-

1 ~~board]~~ members and parole commissioners shall determine:

2 (1) which inmates are to be released on parole or
3 mandatory supervision;

4 (2) conditions of parole or mandatory supervision,
5 including special conditions;

6 (3) the modification and withdrawal of conditions of
7 parole or mandatory supervision;

8 (4) which releasees may be released from supervision
9 and reporting; and

10 (5) the continuation, modification, and revocation of
11 parole or mandatory supervision.

12 (b) [~~(c)~~] The [~~policy~~] board shall develop and implement a
13 policy that clearly defines circumstances under which a board
14 member or parole commissioner should disqualify himself or herself
15 from voting on:

16 (1) a parole decision; or

17 (2) a decision to revoke parole or mandatory
18 supervision.

19 (c) [~~(d)~~] The [~~policy~~] board may adopt reasonable rules as
20 [~~the policy board considers~~] proper or necessary relating to:

21 (1) the eligibility of an inmate for release on parole
22 or release to mandatory supervision;

23 (2) the conduct of a parole or mandatory supervision
24 hearing; or

25 (3) conditions to be imposed on a releasee.

26 (d) [~~(e)~~] The presiding officer [~~policy board~~] may provide
27 a written plan for the administrative review of actions taken by a

1 parole panel by a review panel [~~the entire membership or by a subset~~
2 ~~of the entire membership of the board~~].

3 (e) [~~(f)~~] Board members and parole commissioners shall, at
4 the direction of the presiding officer, file activity reports on
5 duties performed under this chapter.

6 SECTION 11. Section 508.045, Government Code, is amended to
7 read as follows:

8 Sec. 508.045. PAROLE PANELS. (a) Except as provided by
9 Section 508.046, board members and parole commissioners shall act
10 in panels composed of three [~~persons each~~] in matters of:

- 11 (1) release on parole;
- 12 (2) release to mandatory supervision; and
- 13 (3) revocation of parole or mandatory supervision.

14 (b) The presiding officer [~~of the board~~] shall designate the
15 composition of each panel, and may designate panels composed only
16 of board members, composed only of parole commissioners, or
17 composed of any combination of members and parole commissioners.

18 (c) A parole panel may:

- 19 (1) grant, deny, or revoke parole;
- 20 (2) revoke mandatory supervision; and
- 21 (3) conduct parole revocation hearings and mandatory
22 supervision revocation hearings.

23 SECTION 12. Subsection (a), Section 508.047, Government
24 Code, is amended to read as follows:

25 (a) The members of the [~~policy~~] board shall meet at least
26 once in each quarter of the calendar year at a site determined by
27 the presiding officer.

1 SECTION 13. Subsection (b), Section 508.047, Government
2 Code, is amended to read as follows:

3 (b) Except as provided by Article 48.011, Code of Criminal
4 Procedure, the [~~The~~] members of the board are not required to meet
5 as a body to perform the members' duties in clemency matters.

6 SECTION 14. Section 508.049, Government Code, is amended to
7 read as follows:

8 Sec. 508.049. MISSION STATEMENT. (a) The [~~policy~~] board,
9 after consultation with the governor and the Texas Board of
10 Criminal Justice, shall adopt a mission statement that reflects the
11 responsibilities for the operation of the parole process that are
12 assigned to the [~~policy board, the~~] board, the division, the
13 department, or the Texas Board of Criminal Justice.

14 (b) The [~~policy~~] board shall include in the mission
15 statement a description of specific locations at which the board
16 intends to conduct business related to the operation of the parole
17 process.

18 SECTION 15. Section 508.082, Government Code, is amended to
19 read as follows:

20 Sec. 508.082. RULES. The [~~policy~~] board shall adopt rules
21 relating to:

22 (1) the submission and presentation of information and
23 arguments to the board, a parole panel, and the department for and
24 in behalf of an inmate; and

25 (2) the time, place, and manner of contact between a
26 person representing an inmate and:

27 (A) a member of the board or a parole

1 commissioner;

2 (B) an employee of the board; or

3 (C) an employee of the department.

4 SECTION 16. Subsection (b), Section 508.144, Government
5 Code, is amended to read as follows:

6 (b) If a board member or parole commissioner deviates from
7 the parole guidelines in voting on a parole decision, the member or
8 parole commissioner shall:

9 (1) produce a brief written statement describing the
10 circumstances regarding the departure from the guidelines; and

11 (2) place a copy of the statement in the file of the
12 inmate for whom the parole decision was made.

13 SECTION 17. Subsection (b), Section 508.153, Government
14 Code, is amended to read as follows:

15 (b) If more than one person is entitled to appear in person
16 before the board members or parole commissioners, only the person
17 chosen by all persons entitled to appear as the persons' sole
18 representative may appear [~~before the board members~~].

19 SECTION 18. Subsection (a), Section 508.281, Government
20 Code, is amended to read as follows:

21 (a) A releasee, a person released although ineligible for
22 release, or a person granted a conditional pardon is entitled to a
23 hearing before a parole panel or a designated agent of the board
24 under the rules adopted by the [~~policy~~] board and within a period
25 that permits a parole panel, a designee of the board, or the
26 department to dispose of the charges within the periods established
27 by Sections 508.282(a) and (b) if the releasee or person:

1 (1) is accused of a violation of the releasee's parole
2 or mandatory supervision or the person's conditional pardon, on
3 information and complaint by a peace officer or parole officer; or

4 (2) is arrested after an ineligible release.

5 SECTION 19. Subsection (c), Section 508.313, Government
6 Code, is amended to read as follows:

7 (c) The department may provide information that is
8 confidential and privileged under Subsection (a) to:

9 (1) the governor;

10 (2) a member of the board or a parole commissioner;

11 (3) the Criminal Justice Policy Council in performing
12 duties of the council under Section 413.017; or

13 (4) an eligible entity requesting information for a
14 law enforcement, prosecutorial, correctional, clemency, or
15 treatment purpose.

16 SECTION 20. Section 492.0131, Government Code, is amended
17 to read as follows:

18 Sec. 492.0131. PAROLE RULES, POLICIES, PROCEDURES. The
19 board and the presiding officer of the Board of Pardons and Paroles
20 [~~Policy Board~~] shall jointly review all rules, policies, and
21 procedures of the department and the Board of Pardons and Paroles
22 that relate to or affect the operation of the parole process. The
23 board and the presiding officer of the Board of Pardons and Paroles
24 [~~policy board~~] shall identify areas of inconsistency between the
25 department and the Board of Pardons and Paroles and shall amend
26 rules or change policies and procedures as necessary for consistent
27 operation of the parole process.

1 SECTION 21. Section 551.124, Government Code, is amended to
2 read as follows:

3 Sec. 551.124. BOARD OF PARDONS AND PAROLES. At the call of
4 the presiding officer of the Board of Pardons and Paroles, the board
5 may hold a hearing on clemency matters by telephone conference
6 call. Other than the deliberations of the board, the proceedings at
7 the telephone conference call hearing shall be recorded and made
8 available to the public in the same manner as if the members of the
9 board had met as a body to hold the hearing.

10 SECTION 22. Chapter 48, Code of Criminal Procedure, is
11 amended by adding Article 48.011 to read as follows:

12 Art. 48.011. MEETINGS: CAPITAL CASE. (a) In a capital
13 case, the members of the Board of Pardons and Paroles shall perform
14 the members' duties in clemency matters by meeting as a body or by
15 participating in a telephone conference call as permitted by
16 Section 551.124, Government Code.

17 (b) The Board of Pardons and Paroles shall deliberate
18 privately, but at the conclusion of deliberations each board member
19 shall announce publicly the member's individual decision as to
20 whether to recommend clemency and shall sign the member's name with
21 the member's written recommendation and reasons for that
22 recommendation.

23 (c) The Board of Pardons and Paroles shall adopt rules as
24 necessary to implement the requirements of this article.

25 SECTION 23. Section 508.0361, Government Code, is repealed.

26 SECTION 24. (a) The governor shall appoint new members to
27 the Board of Pardons and Paroles on or before January 1, 2004, and

1 the terms of members serving on December 31, 2003, expire on the
2 appointment of the new members. The governor may appoint but is
3 not required to appoint as new members persons who served on the
4 board before January 1, 2004.

5 (b) Of the new members of the Board of Pardons and Paroles,
6 the governor shall appoint two to serve terms expiring February 1,
7 2005, two to serve terms expiring February 1, 2007, and three to
8 serve terms expiring February 1, 2009. On the expiration of the
9 terms of the initial members of the new board, the term of a member
10 appointed by the governor is six years.

11 (c) On September 1, 2003, a rule of the Board of Pardons and
12 Paroles Policy Board is a rule of the Board of Pardons and Paroles.

13 SECTION 25. (a) The changes in law made by Sections 13, 21,
14 and 22 of this Act apply only to a consideration by the Board of
15 Pardons and Paroles regarding a clemency matter in a capital case
16 that occurs on or after the effective date of this Act.

17 (b) The Board of Pardons and Paroles shall adopt the rules
18 required by Subsection (c), Article 48.011, Code of Criminal
19 Procedure, as added by this Act, not later than October 1, 2003.

20 SECTION 26. This Act takes effect September 1, 2003.