

BILL ANALYSIS

Senate Research Center

C.S.S.B. 548
By: Ellis
Criminal Justice
4/13/2005
Committee Report (Substituted)

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Currently, the Texas Board of Pardons and Paroles (board) is not required to meet as a body when considering clemency matters. Board members are routinely provided packets of information from staff regarding the inmates coming up for consideration. Board members then vote by phone or fax and do not explain or discuss their votes.

In 1998, State District Judge Paul Davis of Austin ruled twice that the state's clemency request system is unconstitutional and violates the state's open meetings law. The process was also criticized by United States District Judge Sam Sparks of Austin, who argued that it was excessively secretive.

C.S.S.B. 548 requires the board to meet as a body to consider clemency matters in capital cases.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Board of Pardons and Paroles in SECTION 2 (Section 551.124, Government Code) and SECTION 3 (Article 48.011, Code of Criminal Procedure) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 508.047(b), Government Code, to provide that, except as provided by Article 48.011 (Meetings: Capital Case), Code of Criminal Procedure, Section 551.124 (Board of Pardons and Parole), and Section 551.127 (Videoconference Call), [Government Code], the members of the Board of Pardons and Paroles (board) are not required to meet as a body to perform the members' duties in clemency matters.

SECTION 2. Amends Section 551.124, Government Code, as follows:

Sec. 551.124. BOARD OF PARDONS AND PAROLES. (a) Creates subsection from existing text.

(b) Authorizes the board to deliberate privately, but requires the presiding officer, at the conclusion of deliberations, to announce publicly individual members' decisions as to whether to recommend clemency. Requires each member to sign the member's name with the member's written recommendation and reasons, if any, for the recommendation.

(c) Requires the board to adopt rules to implement the requirements of this section.

SECTION 3. Amends Chapter 48, Code of Criminal Procedure, by adding Article 48.011, as follows:

Art. 48.011. MEETINGS: CAPITAL CASE. (a) Requires the members of the board, in a capital case, to perform the members' duties in clemency matters by meeting as a body, or by participating in a telephone conference call as permitted by Section 551.124, Government Code, and provides that members [have] the express authority to participate by videoconference as permitted by Section 551.127.

(b) Authorizes, regardless of whether the members of the board meet in person, participate in a telephone conference call, or participate in a video conference, the attorney or other person representing the inmate and any person representing the family of the victim to appear in person or be present on the telephone conference call, as applicable, to make a presentation on the clemency matter. Authorizes the board, except with respect to individual members of the board, to limit the number of persons who are authorized to make a presentation and to prohibit any person from being heard. Prohibits the hearing from being subject to the requirements of the Open Meetings Act that the hearing be open to the public.

(c) Requires the meeting to be conducted at the correctional facility where the inmate is housed. Requires the inmate to be allowed to be present, absent overriding security issues.

(d) Requires the board to cause a record to be kept.

(e) Requires the board to adopt rules as necessary to implement the requirements of this article.

SECTION 4. (a) Makes application of this Act prospective.

(b) Requires the board to adopt the rules required by Article 48.011(e), Code of Criminal Procedure, as added by this Act, and Section 551.124, Government Code, as amended by this Act, not later than June 1, 2006.

SECTION 5. Effective date: upon passage or September 1, 2005.