

## **BILL ANALYSIS**

C.S.H.B. 12  
By: Hilderbran  
Culture, Recreation, & Tourism  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Since 1995, the amount of revenue Texas Parks and Wildlife Department (TPWD) receives from a portion of the sales tax attributable to the sale of certain sporting goods, has been statutorily capped at \$32 million. There have been no increases to reflect either population growth, inflation or the fact that Texans and our visitors who use the parks and outdoors have consistently increased the amount expended annually on parks and sporting goods equipment. Based on the 2004 Crompton Report, the park system generated over \$1.4 billion in economic activity (2004) and over \$1.6 billion in sales attributed to the "sporting goods tax.," which generates a multiplier to local merchants and businesses. Additionally, Parks and Wildlife was recently reviewed by the State Auditor's Office. Recommendations were made regarding the management practices of TPWD. Finally, many historical sites are currently administered by TPWD. The Texas Historical Commission (THC) manages and maintains most of the remaining historical sites in Texas. Additionally,

CSHB 12 seeks to remove the \$32 million cap on the amount of revenue TPWD can receive from the sporting goods sales tax. This will allow TPWD to begin addressing the serious backlog of repairs on state parks, establish an ongoing maintenance program, acquisition of future park land, and continue the grant system for local parks. CSHB12 also establishes a large municipal fund which will prevent competition between large and small communities for funding. Many management changes are included in the bill to put TPWD into compliance with the State Auditor's recommendation. There are also other necessary management changes for TPWD and THC. Finally, CSHB 12 allows for the transfer of certain historic sites from TPWD to THC and sets up the financial means to support to sites while providing additional funding for expansion, renovation, management, operation or financial support for the transferred sites.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Historical Commission (THC) in SECTION 1 of this bill. It is the committee's opinion that rulemaking authority is expressly granted to the Texas Parks and Wildlife Commission in SECTION 8 and SECTION 10 of this bill. It is the committee's opinion that rulemaking authority is expressly granted to TPWD in SECTION 25 of this bill. In SECTION 28 of this bill, Texas Parks and Wildlife Commission rule that applies to both a transferred site and park that is not transferred is a rule of both commissions and applies to the transferred site until amended or repealed by the THC.

### **ANALYSIS**

SECTION 1. Adds Section 442.0051 and 442.0052 to Subchapter A, Chapter 442, of the Government Code. The added section allows the Texas Historical Commission (THC), by rule, to establish reasonable fees for THC purposes under Chapter 442 of the Government Code, including an admission fee appropriate to a historic site under its jurisdiction, and allows THC to utilize the services of volunteers. However, a volunteer may not enforce provisions of the Government code.

SECTION 2. Adds Subchapter C to Chapter 442 of the Government Code regarding certain historic sites. This Subchapter sets forth the definition of a "historic site" for the subchapter and delineates 18 historic sites and parks to be transferred from the jurisdiction of Texas Parks and Wildlife Department (TPWD) to THC. It further states that Sec. 442.072(b) of the Government Code applies to historic sites required by the state to operate in a particular manner or for a

particular purpose. THC is given the powers necessary to operate the site in the required manner or for the required purpose. THC may work with a nonprofit corporation, entity, foundation, or association for expansion, renovation, management, operation, or financial support of a historic site.

Section 442.073 of the Government Code sets up and describes the historic site account in the general revenue fund, and describes its operation and uses.

Section 442.074 of the Government Code allows THC to seek and accept grants and donations to be deposited in the historic site account from any appropriate source. It states that money accepted under the section shall be credited to the historic site account.

SECTION 3. Transfers and renumbers Section 442.019 of the Government Code to Subchapter C, Chapter 442, of the Government Code. This section is renumbered to 442.075, and the word "historical" is removed and replaced as "historic" throughout the section where necessary. This renumbered section states that Section 442.071, Government Code, relating to the definition of a historic site, does not apply to this section.

SECTION 4. Amends Section 651.004 of the Government Code to add Subsection (f) which states the TPWD is not required to comply with management-to-staff ratio requirements of the section with respect to employees located in field-based operations.

SECTION 5. Amends Section 11.0262(a) of the Parks and Wildlife Code to include a condition that would allow an employee of the state parks division of TPWD to accept a gratuity if the employee, as an auxiliary duty in performance of a regular duty renders a special customer service to an individual or group, and if the gratuity is offered by a customer of the restaurant, cafeteria, food service establishment, or hospitality unit of the state parks division, or of a hospitality unit of the state parks division, in appreciation of receiving some other customer service from the employee.

SECTION 6. Amends Section 11.035(b) of the Parks and Wildlife Code to remove the requirement to deposit to the credit of the state parks account \$1,125,000 per month and 40% of the amount above \$27 million per year of credits made to TPWD under the Tax code and replaces the deposit requirement with an amount equal to 74 percent of the credits made to TPWD under Section 151.801 of the Tax Code.

SECTION 7. Modifies Section 11.043(b) of the Parks and Wildlife Code by clarifying that the Texas Parks and Wildlife Conservation and Capitol Account consists of proceeds of revenue bonds issued under Section 13.0045, money from any other legally authorized source, and the amount of credits made to the department under the Tax Code after allocation to the state parks account, the large county and municipality recreation and parks account, and the Texas recreation and parks account.

SECTION 8. Modifies Chapter 11 of the Parks and Wildlife Code by adding Subchapter K, which pertains to Management and Efficiency Reviews. The Subchapter defines "Maintenance Equipment" and "Outdated Equipment." The Parks and Wildlife Commission shall, by rule, establish an equipment review system for TPWD to annually determine if the maintenance equipment has become outdated since the last review. The review system must require TPWD to sell outdated equipment as specified by the Parks and Wildlife Commission, and TPWD shall deposit proceeds from the sale of equipment to the credit of the appropriate parks and wildlife account.

Section 11.252 defines "maintenance" for the section and states that the Parks and Wildlife Commission shall, by rule, establish a maintenance provider review system through which TPWD annually determines whether a maintenance task performed by TPWD could be performed by a third-party contractor in a more cost-effective manner and in a way that yields results equal to or greater than the quality produced by TPWD. This maintenance provider review system must require TPWD to contract with a third party to perform any maintenance task that could be performed by a third-party contractor in a manner that meets the criteria stated in the bill after TPWD's cost of administering the contract is added to the cost of performance by the third party.

Section 11.253 states that by January 15 of each odd-numbered year, TPWD shall submit to specified persons a management plan to address their maintenance responsibilities and a priority list that includes a prioritized list of facilities operated by TPWD that are most in need of

repair, renovation, expansion, or other maintenance. The maintenance responsibilities and priority list must also include an itemized list explaining any additional funding requested by TPWD to accomplish the repair, renovation, expansion, or maintenance, and the results of the reviews conducted under Sections 11.251, 11.252, and 13.019(b) of the Parks and Wildlife Code.

SECTION 9. Amends Section 13.0061(a) of the Parks and Wildlife Code to allow TPWD to harvest and sell, or sell in place, livestock, timber, hay, or any other product grown on state park land that they find to be in excess of natural resource management, educational, or interpretive objectives.

SECTION 10. Includes Section 13.0075 in Subchapter A, Chapter 13, of the Parks and Wildlife Code, which gives the Parks and Wildlife Commission rulemaking authority to adopt criteria for determining the eligibility of land donated to TPWD for inclusion in the state parks system.

SECTION 11. Adds Section 13.0145 to the Parks and Wildlife Code, which requires TPWD to set and enforce speed limits on a road in a state park, wildlife management area, or other site controlled by TPWD, to specified limits. The section further requires TPWD to consult with the Texas Department Of Transportation regarding the reasonableness and safety of the speed limits based on certain criteria. TPWD shall also amend the limit if necessary.

SECTION 12. Amends Section 13.015 of the Parks and Wildlife Code by allowing TPWD to promote visits and enhance revenue at parks. TPWD may also establish and operate staff concessions and purchase products for resale or rental at a profit. TPWD shall operate any resale concession program using standard business practice models to generate revenue and provide quality customer service while adhering to conservation principles. Finally, TPWD may recruit and select private service providers to enter into leased concession contracts with TPWD to provide necessary and appropriate visitor services.

SECTION 13. Section 13.016 of the Parks and Wildlife Code is amended to reflect the heading of the section as "inmate" instead of "prison" labor and to allow TPWD to use the labor of an inmate confined in a state, county, or local correctional facility on or in connection with state parks, wildlife management areas, or other property under the control or jurisdiction of TPWD. This section also specifies that the inmate remains under the control of the Texas Department of Criminal Justice (TDCJ) or county or local correction facility, as appropriate, and are considered as serving their terms in the TDCJ or other correctional facility. TPWD may purchase equipment, meals, supplies, and materials for an inmate working at a TPWD site as necessary to facilitate the use of the labor described in this section.

SECTION 14. Amends Section 13.019 of the Parks and Wildlife Code to include language regarding a facility reservation system and to require TPWD to annually evaluate whether the system used for the advanced reservation of facilities, lodging, and campsites is as user-friendly as possible and to make modification to the system as necessary to enhance the user-friendliness of the reservation system.

SECTION 15. Amends Chapter 13 of the Parks and Wildlife Code to include Section 13.0191 regarding facility and lodging fees. The added section states that a fee charged by TPWD for the use of a facility or lodging at a state park may vary on a seasonal basis and may be set in an amount to recover the direct and indirect costs of providing the facility or lodging and provide a reasonable rate of return. Items to be considered in setting a fee include the cost required to provide, maintain, and improve amenities available at the site and certain seasonal variables.

SECTION 16. Adds the heading for Subchapter A to Chapter 24 of the Parks and Wildlife Code regarding local parks for smaller counties and municipalities and other political subdivisions.

SECTION 17. Amends Section 24.001 of the Parks and Wildlife Code by applying the definitions set forth to the subchapter instead of the chapter, and by changing the definition of Political Subdivision by replacing "city" with "municipality."

SECTION 18. Amends Section 24.002 of the Parks and Wildlife Code to specify that money in the Texas Recreation and Parks Account may be used only for grants to a county or municipality

with a population less than 500,000, or any other political subdivision that is not a county or municipality.

SECTION 19. Includes "Revenue Dedication" in the header of Section 24.003 of the Parks and Wildlife Code and states that TPWD shall deposit to the Texas Recreation and Parks Account an amount of money equal to 15% of the credits made to the department under Section 151.801 of the Tax Code instead of \$1,125,000 per month and 40% of the amount above \$27 million per year of the credits made to TPWD under Section 151.801 of the Tax Code. Also, money from any other source authorized by law, shall be deposited into the Recreation and Parks account.

SECTIONS 20-24. Makes cleanup changes by replacing the words "chapter" and "act" with "subchapter," and makes other nonsubstantive conforming changes.

SECTION 25. Adds Subchapter B to Chapter 24 of the Parks and Wildlife Code regarding parks for large counties and municipalities. This Subchapter sets forth, in Section 24.051 of the Parks and Wildlife Code, the definitions of "account," "cultural resource site or area," "federal rehabilitation and recovery grants," "large county or municipality," "natural area," "nonprofit corporation," "open space area," "park," "parks, recreational, and open space area plan," "political subdivision," and "underserved population." Section 24.052 describes the large county and municipality recreation and parks account. Section 24.053 states the account's revenue source as an amount equal to 10 percent of the credits made to TPWD under Section 151.801, Tax Code, and money from any other source authorized by law. Section 24.054 pertains to assistance grants by TPWD to a large county or municipality for its use as all or part of the required share of the funds for eligibility for receiving a federal rehabilitation and recovery grant, so long as certain qualifications are met. Section 24.055 pertains to direct state matching grants, stating that TPWD shall make grants to provide one-half of the costs of planning, acquisition, or development of a park, recreational area, or open space area to be owned and operated by the county or municipality. This section requires TPWD to make rules regarding grant assistance and sets forth requirements governing the use of money granted to a county or municipality or nonprofit corporation.

Section 24.056 states that if the revenue to the large county and municipality recreation and parks account exceeds \$14 million per year, an amount not less than 15% shall be made available for grants to large counties and municipalities for up to 50% of the cost of acquisition or development of specific recreation facilities and other purposes. Section 24.057 states that grants may only be used if there is a need for the acquisition and development of property for which the grant is requested, and if a written statement is obtained from the regional planning commission with jurisdiction over the area of the property being acquired. Section 24.058 pertains to acquisition of property, stating that property may not be acquired using grant money if the price exceeds the fair market value. It may be acquired for a life tenancy if necessary for orderly and expedient acquisition. Further, this section states that land or water designated for certain use is included in park, recreational, cultural resource, and open space plans for multiple counties or municipalities. Those counties or municipalities may cooperate to secure assistance from the account to acquire or develop the property. TPWD may modify standards but must assure that the cooperative management plan can be developed and that one of the counties or municipalities meets the necessary qualifications. All land and water purchased with assistance from the account shall be used for park, recreational, cultural resource, indoor recreation center, and open space purposes in perpetuity and may not be used for any other purpose, except where the use is compatible with park, recreational, cultural resource, and open space objectives, and the use is approved in advance by TPWD. Section 24.059 specifies that after the grant is approved and on written request of the director, the comptroller shall issue a warrant drawn against the account and payable to the county, municipality, or nonprofit corporation. The recipient shall keep records as required by TPWD. The director and comptroller, or their authorized representative, may examine any relevant records of the recipient. The recipient shall, in a timely manner, provide TPWD with reports pertaining to the property as specified.

Section 24.060 states that the attorney general shall file suit against a county, municipality, or nonprofit corporation that fails to comply with requirements so that the grant, plus interest on that amount of five percent a year accruing from the time of noncompliance or for injunctive relief to require compliance with the subchapter may be recovered. If found guilty, the county, municipality, or nonprofit corporation will not be eligible for participation in the program for three years following the finding of noncompliance. Section 24.061 states that no money credited to the account may be used for publicity or related purposes. Section 24.062

states that the subchapter does not authorize a large county or municipality to acquire, develop, maintain, or operate a park, recreational area, open space area, or natural area.

SECTION 26. Amends Section 151.801(c) of the Tax Code to remove the language regarding the deposit of proceeds from the collection of the sporting goods tax and replaces the language to say that the proceeds from the sporting goods tax shall be deposited as follows: (1) an amount equal to 94% percent of the proceeds shall be credited to TPWD and deposited as specified in the Parks and Wildlife Code, (2) an amount equal to 6% of the proceeds shall be credited to THC and deposited as specified in Section 442.073 of the Government Code. Language stating that the comptroller shall not credit in excess of \$32 million in sporting goods tax revenue each year to TPWD is removed.

SECTION 27. Requires TPWD to comply with the State Auditor's Office recommendations set forth in "An Audit Report on Financial Processes at the Parks and Wildlife Department Report No. 07-021" by the dates specified in TPWD's management responses included in Appendix 6 of the report contingent on receiving sufficient appropriated funds for the implementation of the recommendation is received by TPWD.

SECTION 28. Defines "historic site" for this section and sets forth and describes what will be transferred to THC on or after January 1, 2008 along with the historic sites, including obligations and liabilities of TPWD associated with the historic sites, unobligated and unexpended funds appropriated to TPWD for administration of the historic sites, all equipment and property of TPWD used for administration or related to the historic sites; and all files and other records of TPWD regarding the historic sites. Transfers the Texas Parks and Wildlife Commission rules relating to the historic sites to THC and keeps them in effect until amended or repealed by THC. Maintains the rights of the holders of bonds and other obligations. States that THC is the successor agency to TPWD for these historic sites and reflects this in statute and other law. A rule adopted by TPWD that is in effect immediately before January 1, 2008 and relates to the historic sites is, on January 1, 2008, a rule of the THC shall remain in effect until amended or repealed by THC. A rule that applies to both a transferred historic site and park that is not transferred is a rule of both commissions and applies to the transferred historic site until amended or repealed by THC. Requires THC to prepare a management plan for each historic site before the site transfer may occur. States that TPWD shall operate and maintain the historic sites, under applicable law as it existed on January 1, 2007, until they are transferred. TPWD and THC shall keep the House Committee on Culture, Recreation, and Tourism informed of the progress of the transfer of each historic site. The bill further states that an employee of TPWD whose job responsibilities are more than 50% related to a transferred site will be a THC employee on the date of the transfer, and he or she may not be dismissed before the first anniversary of the date of the transfer except for cause.

SECTION 29. States that money from the Texas recreation and parks account may only be granted to support the funding for a local park if the procedural requirements under Chapter 24 of the Parks and Wildlife Code have been met. In case of conflict with any other law, this section prevails.

SECTION 30. Effective date: Immediately upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2007.

#### **EFFECTIVE DATE**

Immediately upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2007.

#### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

CSHB12 changes the caption to remove "related to Parks and historic sites." It modifies the listed historic sites to be transferred by including Fort Griffin and Fort McKavett State Historic Sites and removing Fanthorp Inn State Historic Site, Sebastopol House State Historic Site, Fort Leaton State Historic Site, Lipantitlan State Historic Site, Monument Hill and Kreische Brewery State Historic Sites, and Port Isabel Lighthouse State Historic Site. The name of Sabine Pass Battleground State Park and State Historic Site is changes to Sabine Pass Battleground State

Historic Site. The language regarding the use of money in the Historic Site Account is modified to say that it may only be used to administer, operate, preserve, repair, expand, or otherwise maintain a historic site or to acquire a historical item appropriate to a historic site. Bill section and statutory section numbers are modified as necessary. Language is removed allowing the legislature to adjust the percentage allocated to the THC and TPWD under the Tax Code in future appropriations to reflect the transfer of a site and the associated savings or costs to each agency. Language is removed regarding the transfer of Subchapters A and H regarding Fannin Battleground and the Port Isabel Lighthouse, and their redesignation as Subchapters D and E, from the Parks and Wildlife Code to the Government Code. CSHB12 provides for many TPWD management changes regarding staff to management ratio, state park employees accepting gratuity, management and efficiency reviews, sale of livestock, promoting park visitation and revenue, concessions, inmate labor assistance, facility reservation system and fees, and facility and lodging fees. The percentage of the credits made to the department to be deposited to the credit of the state parks account is specified. The percent of credits made to TPWD to be deposited to the credit of the Texas recreation and parks account is specified. The percent of credit made to TPWD to be deposited to the credit of the large county and municipality recreation and parks account is specified. The percent of proceeds from the sporting goods sales tax credited to TPWD and THC is specified, to be deposited as specified. CSHB12 requires TPWD to comply with the deadlines stated in their response to the recommendations set forth by the State Auditor's Office. The date for the transfers of the historic sites and all accompanying obligations, liabilities, funds, rules, equipment, property, files, records, and agency references is changed to January 1, 2008. THC is required to prepare a management plan for each historic site before the transfer of the site. Both TPWD and THC are required to keep the House Committee on Culture, Recreation, and Tourism informed of the progress of the transfer of each site. An employee's job responsibilities for each site must be more than 50% related to the site being transferred to become an employee of THC, and THC cannot dismiss a transferred employee within a year of the transfer date except for cause. The language regarding restrictions on allocation of money in the state parks account is removed. Language regarding funding from the Texas Recreation and Parks account to support local parks is added, along with the specification that in the event of a conflict with any other law passed by the 80th Legislature, this section prevails. Finally, the effective date is modified from a date to certain to make CSHB12 effective upon passage with a sufficient vote.