

BILL ANALYSIS

C.S.S.B. 900

By: Deuell
Culture, Recreation, & Tourism
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Texas Historical Commission's mission is to protect and preserve Texas' unique historic resources. The Commission has four main functions: identifying and designating historic resources in Texas, reviewing proposed projects to help protect historic resources on public and private lands, providing financial and education assistance to communities and organizations for developing and preserving historic resources, and acting a steward to preserve and interpret historic resources entrusted to the State's care.

The agency operated with a budget of about \$11 million in FY 2006 an employs about 110 staff. The Commission is subject to the Sunset Act and will be abolished on September 1, 2007, unless continued by the Legislature. The Sunset review found that the Commission's role as the leader of historic preservation efforts in Texas requires the agency to delicately balance its many activities to ensure that it meets its most important goals.

CSSB 900 continues the Texas Historical Commission for 12 years. CSSB 900 continues the commission for 12 years and enacts the recommendations of the Sunset Advisory Commission relating to the Texas Historical Commission. The bill requires the Texas Historical Commission to adopt rules governing the relationship between the agency and its associated nonprofit corporation, creates a statewide strategy for awarding historical markers, and contains several of the Sunset Commission's across-the-board recommendations. Finally, CSSB 900 allows for the transfer of certain historic sites from Texas Parks and Wildlife Department to the Commission and sets up the financial means to support the sites while providing additional funding for expansion, renovation, management, operation or financial support for the transferred sites. Provides additional management language for the Commission.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Historical Commission in SECTIONS 5, 6, 7, 12, and 15 of this bill. In SECTION 17 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and park that is not transferred is a rule of both commissions and applies to the transferred site until amended or repealed by the THC.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

CSSB 900 changes the Government Code to remove the specific qualifications needed to be appointed to the Historical Commission's (the commission) 17 member commission. The bill removes the requirement that one member must be a professional archeologist, one member must be a professional historian, and one member must be a licensed architect who has expertise in historical preservation and architectural history. The bill removes the requirement that fourteen members of the commission must be public members.

CSSB 900 includes language to provide that a person may not be a member of the commission if the person or his/her spouse owns or controls, directly or indirectly, more than a 10 percent interest in a business of other organization regulated by the commission or receiving money other than grant money from the commission. The bill provides that a person may not be a member of the commission if the person or his/her spouse uses or receives a substantial amount of tangible goods, services, or money from the commission, other than compensation authorized be law, or if the person or his/her spouse is employed by or participates in the management of a business or other organization regulated by or receiving money other than grant money from the commission.

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CSSB 900 removes the requirement that the governor, in making appointments to the commission, shall appoint at least two members from counties with a population of less than 50,000.

CSSB 900 continues the commission until September 1, 2019. The bill updates standard Sunset language and removes prior language. The updated language requires members of the commission to complete training before assuming their duties. The bill provides that a person appointed to and qualifies for office as a member of the commission may not vote, deliberate, or be counted as a member in attendance at a meeting until the person completes a training program. Prior language pertaining to these requirements are deleted. CSSB 900 specifies that the training program must provide the person information regarding:

- legislation that created the commission;
- programs, functions, rules, and budget of the commission;
- results of the commission's most recent formal audit;
- requirements of laws relating to open meeting, public information, administrative procedure and conflicts of interest; and
- any applicable ethics policies adopted by the commission to the Texas Ethics Commission.

CSSB 900 provides that a person appointed to the commission be entitled to reimbursement for travel expenses incurred in attending such training program, regardless of whether the attendance occurs before or after the person qualifies for office.

CSSB 900 redefines "Texas trade association," and updates standard Sunset language prohibiting commission members, high-level employees, and spouses from serving as an officer or employee of a related Texas trade association.

CSSB 900 provides that the executive director may not serve as a voting director on the board of directors of an affiliated nonprofit organization.

Adds language regarding fees established by Texas Historical Commission, the use of volunteer services, eligibility criteria for inclusion of real property in the historic sites system.

CSSB 900 requires the commission adopt rules governing the relationship between the Commission and any affiliated nonprofit organization. The rules, at a minimum, must:

- define the extent to which commission employees with regulatory responsibilities, including the executive director, may participate in activities that raise funds for an affiliated nonprofit organization, which may not include the direct solicitation of funds; and
- define the relationship between commission employees and an affiliated nonprofit organization.

CSSB 900 requires the commission to establish guidelines that will identify and define the type of administrative and financial support the agency should give to an affiliated nonprofit corporation.

CSSB 900 adds the requirements for the commission to approach the marker program more strategically by developing statewide themes for programs related to the Commission's preservation goals for the state and to establish a limit for the number of markers the commission awards annually. The bill requires the commission to adopt rules to establish guidelines for an application for, and the commission's review of the application for, a historical marker, monument, or medallion; and the guidelines must include ranking criteria for the applications. The bill provides that the commission give priority to the markers that relate to commission-developed statewide themes.

CSSB 900 updates standard Sunset language requiring the commission to maintain a system to promptly and efficiently act on complaints, maintain information on all complaints, make information available describing its procedure for complaint investigation and resolution, and periodically notify the parties about policies for and status of complaints.

CSSB 900 adds standard Sunset language requiring the commission to make effective use of technology in its delivery of services and provision of information to the public. Such policy must ensure that the public is able to interact with the commission on the Internet.

CSSB 900 requires the commission to develop and implement a policy to encourage the use of negotiated rulemaking procedures and appropriate alternative dispute resolution (ADR) procedures. The bill provides for the conforming the commission's ADR procedures to model guidelines used by the State Office of Administrative Hearings. The bill requires the commission to designate a trained person to coordinate the implementation of the policy, serve as a resource for training needed to implement the procedures for negotiated rulemaking or ADR, and to collect data relevant to the effectiveness of such procedures.

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.

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. Subsection (e) is added to allow the legislature to adjust the percentages allocated to the commission and the Department under Section 151.801(c), Tax Code, in future appropriations to reflect the transfer of a site under this section and the associated savings or costs to each agency.

Transfers Subchapter A, Chapter 22 of the Parks and Wildlife Code to Chapter 442 of the Government Code and redesignates it as Subchapter D. Changes the title to "Fannin Battleground State Historic Site" to the title, and renumbers the Sections as necessary. The name of the site is changed where necessary, and the jurisdiction is transferred to the Commission. The concession account for the site is now also subject to the rules and procedures established by the Commission.

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.

The bill repeals Sections 442.0022(c) and 442.009(d) of the Government Codes. Also, the Commission shall adopt the rules required in this bill by February 1, 2008. The changes in law made by this act only apply to a member appointed to the Commission on or after September 1, 2007. The changes related to complaints only apply to complaints filed with the Commission on or after September 1, 2007.

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. 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. States that THC is the successor agency to TPWD for these historic sites and reflects this in statute and other law. THC is required to prepare a base operating plan for each historic site before the transfer of any site or associated artifact or archival materials. Each plan must include a mission statement outlining the goals for the site, an interpretive plan showing how the mission is to be accomplished, an operating plan including specified items, a maintenance plan, a marketing plan, a business plan, a plan for compliance with specified sections of the Natural Resources Code and the National Historic Preservation Act, and fiscal plans and budgets associated with portions of the Section. An interim study committee shall review the base operating plan. The members of the committee are a subcommittee of the House Committee on Culture, Recreation, and Tourism, and shall be appointed by the chair of the House Committee by September 1, 2007. The interim committee shall obtain feedback and information from professionals familiar with the work of TPWD, THC, the National Park Service, the Council of Texas Archeologists, professional archivists, park managers, and the tourism industry, and shall report their results to the House Committee by September 1, 2008. 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.

Any restrictions on the allocation of money in the state parks account under Section 11.035, Parks and Wildlife Department, on the use of money in the Texas parks and wildlife conservation and capital account under Section 11.043, Parks and Wildlife Code, on the use of money in the Texas recreation and parks account under Section 24.002, Parks and Wildlife Code, or on the allocation of the money under Section 24.003, Parks and Wildlife Code, do not apply to a one-time appropriation of the unencumbered balances of those account on August 31, 2007, made by a rider to the General Appropriations Act that is contingent on the enactment of this Act or a similar Act by the 80th Legislature, and provide for the one-time allocation of that money to the Parks and Wildlife Department and the Texas Historical Commission to be use for repair, renovation, maintenance, and other one-time costs associated with state historic sites and state parks.

EFFECTIVE DATE

September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute removes language in the original bill, and in current law, that specify the qualifications needed to be appointed to the Historical Commission. The substitute removes the requirement that one member must be a professional archeologist, one member must be a professional historian, and one member must be a licensed architect who has expertise in historical preservation and architectural history. The bill removes the requirement that the members of the commission must be public members.

CSSB 900 removes the current requirement that the governor, in making appointments to the commission, appoint at least two members from counties with a population of less than 50,000, and adds that a member of the commission must be a citizen of this state who has demonstrated an interest in the preservation of the state's historical or archeological heritage. In making appointments to the commission, the governor shall seek to have each geographical section of the state represented as nearly as possible.

The substitute modifies language in the original bill that specified that a person may not be a public member of the commission if the person has specific financial ties to the commission or is regulated by the commission. The substitute removes the word public, to conform with the changes to the commission's composition made in the substitute that removed the specification that 14 members must be public members.

Adds language regarding fees established by THC, the use of volunteer services, eligibility criteria for inclusion of real property in the historic sites system. Adds Subchapter C to Chapter 442 of the Government Code. This Subchapter defines "historic site" for the subchapter, transfers 18 historic sites from Parks and Wildlife Department to the Commission, specifies the historic sites to which the subsection applies, and allows the Commission the powers necessary to operate the site in the correct manner and enter into an agreement with a nonprofit entity. Sets up and describes the Historic Site Account, and allows the Commission to seek and accept grants and donations for a historic site from any appropriate source, depositing the money to the historic site account. Includes renumbered and transferred 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. Subsection (e) is added to allow the legislature to adjust the percentages allocated to the commission and the Department under Section 151.801(c), Tax Code, in future appropriations to reflect the transfer of a site under this section and the associated savings or costs to each agency.

Includes transferred Subchapter A, Chapter 22 of the Parks and Wildlife Code as Subchapter D of the Government Code regarding Fannin Battleground State Historic Site and its concession account, Section 442.101 and Section 442.102 respectfully.

Includes 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.

Adds language regarding regulation of the transfer of sites including the definition of "historic site" for the section, beginning date for transfers which include 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. 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. States that THC is the successor agency to TPWD for these historic sites and reflects this in statute and other law. THC is required to prepare a base operating plan for each historic site before the transfer of any site or associated artifact or archival materials. Each plan must include a mission statement outlining the goals for the site, an interpretive plan showing how the mission is to be accomplished, an operating plan including specified items, a maintenance plan, a marketing plan, a business plan, a plan for compliance with specified sections of the Natural Resources Code and the National Historic Preservation Act, and fiscal plans and budgets associated with portions of the Section. An interim study committee shall review the base operating plan. The members of the committee are a subcommittee of the House Committee on Culture, Recreation, and Tourism, and shall be appointed by the chair of the House Committee by September 1, 2007. The interim committee shall obtain feedback and information from professionals familiar with the work of TPWD, THC, the National Park Service, the Council of Texas Archeologists, professional archivists, park managers, and the tourism industry, and shall report their results to the House

Committee by September 1, 2008. 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.

Finally, language is included regarding restrictions on the allocation of money in the state parks account under Section 11.035, Parks and Wildlife Department, on the use of money in the Texas parks and wildlife conservation and capital account under Section 11.043, Parks and Wildlife Code, on the use of money in the Texas recreation and parks account under Section 24.002, Parks and Wildlife Code, or on the allocation of the money under Section 24.003, Parks and Wildlife Code, do not apply to a one-time appropriation of the unencumbered balances of those account on August 31, 2007, made by a rider to the General Appropriations Act that is contingent on the enactment of this Act or a similar Act by the 80th Legislature, and provide for the one-time allocation of that money to the Parks and Wildlife Department and the Texas Historical Commission to be use for repair, renovation, maintenance, and other one-time costs associated with state historic sites and state parks.