

## **BILL ANALYSIS**

Senate Research Center

S.B. 1518  
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Administration  
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Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The 80th Legislature passed H.B. 12, which transferred 18 historic properties from the Texas Parks and Wildlife Department to the Texas Historical Commission (THC). Some provisions related to this authority remained under the Parks and Wildlife Code, rather than the Government Code where THC's powers and duties are outlined.

S.B. 1518 moves the provisions related to the statutory authority to operate historic sites from the Parks and Wildlife Code to the Government Code. It does not change the existing authority of THC to operate the sites.

S.B. 1518 amends current law relating to the powers and duties of the Texas Historical Commission, and imposes a penalty.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Historical Commission in SECTION 3 (Section 442.0054, Government Code), SECTION 4 (Section 442.0059, Government Code), and SECTION 5 (Sections 442.101, 442.106, 442.201, and 442.202, Government Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapter F, Chapter 411, Government Code, by adding Section 411.1146, as follows:

Sec. 411.1146. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: TEXAS HISTORICAL COMMISSION. (a) Entitles the Texas Historical Commission (THC) to obtain criminal history record information maintained by the Department of Public Safety of the State of Texas (DPS) or the identification division of the Federal Bureau of Investigation that relates to a person who is an employee, volunteer, or intern; an applicant to be an employee, volunteer, or intern; or a contractor or subcontractor for THC.

(b) Prohibits criminal history record information obtained by THC under this section from being released or disclosed to any person except on court order or with the consent of the person who is the subject of the information.

(c) Requires THC to collect and destroy criminal history record information that relates to a person immediately after THC uses the information to make an employment or other decision related to the person or take a personnel action relating to the person who is the subject of the criminal history record information.

(d) Prohibits THC from obtaining criminal history record information under this section unless THC first adopts policies and procedures that provide that evidence of a criminal conviction or other relevant information obtained from the criminal history record information does not automatically disqualify an individual from obtaining employment or another position or contract with THC. Requires that the policies and procedures developed under this section provide that the hiring

official will determine whether the individual is qualified for employment based on factors including the specific duties of the position, the number of offenses committed by the individual, the nature and seriousness of each offense, the length of time between the offense and the employment decision, the efforts by the individual at rehabilitation, and the accuracy of the information on the individual's employment application.

SECTION 2. Amends Section 442.0052, Government Code, by adding Subsections (c) and (d), as follows:

(c) Authorizes the executive director of THC (executive director) to waive entrance fees and facility use fees for historic sites under THC's jurisdiction for a volunteer to assist in the accomplishment of the volunteer's service to THC.

(d) Authorizes the executive director to expend funds appropriated to THC from dedicated funding sources for the establishment of an insurance program to protect volunteers in the performance of volunteer service, and recognition of the services of a volunteer or volunteer groups.

SECTION 3. Amends Subchapter A, Chapter 442, Government Code, by adding Section 442.0054, as follows:

Sec. 442.0054. DISCLOSURE OF PERSONAL CUSTOMER INFORMATION. (a) Prohibits the name and address and a telephone, social security, driver's license, bank account, credit card, or charge card number of a person who purchases customer products, licenses, or services from THC from being disclosed except as authorized under this section.

(b) Provides that Chapter 552 (Public Information) does not apply to customer information described by Subsection (a)

(c) Requires THC by rule to adopt policies relating to the release of customer information, the use of the customer information by THC, and the sale of a mailing list consisting of the names and addresses of persons who purchase customer products, licenses, or services.

(d) Requires THC to include in its policies a method for a person by request to exclude information about the person from a mailing list sold by THC.

(e) Authorizes THC to disclose customer information to a federal or state law enforcement agency if the agency provides a lawfully issued subpoena.

(f) Provides that THC and its officers and employee are immune from civil liability for an unintentional violation of this section.

(g) Provides that in this section, a reference to THC includes a reference to an agent of THC.

SECTION 4. Amends Subchapter A, Chapter 442, Government Code, by adding Sections 442.0056-44.0059, as follows:

Sec. 442.0056. ACQUISITION OF HISTORIC SITES. (a) Authorizes THC to acquire by purchase, gift, or other manner historic sites:

(1) where events occurred that represent an important aspect of the cultural, political, economic, military, or social history of the nation or state;

(2) significantly associated with the lives of outstanding historic persons or with an important event that represents a great ideal or idea;

(3) embodying the distinguishing characteristics of an architectural type that is inherently valuable for study of a period, style, or method of construction;

(4) that contribute significantly to the understanding of aboriginal humans in the nation or state; or

(5) that are of significant geologic interest relating to prehistoric animal or plant life.

(b) Requires THC to restore and maintain each historic site acquired under this section for the benefit of the general public. Authorizes THC to enter into interagency contracts for this purpose.

(c) Requires THC to formulate plans for the preservation and development of historic sites. Requires THC, before formulating a plan for a specific site, to conduct an archeological survey of the site. Requires THC, in formulating plans, to consider the results from the archeological survey for the site if the plan is for a specific site, and consider the resources necessary to manage a site.

Sec. 442.0057. SOLICITATION, RECEIPT, AND TRANSFER OF LAND. (a) Authorizes THC to solicit and receive donations for land for public purposes and to refuse donations of lands not acceptable for public purposes.

(b) Authorizes THC, if title to a site has vested in THC and if ownership of the site is no longer in the best interest of THC, to transfer the title to certain entities under certain conditions.

Sec. 442.0058. SALE OR EXCHANGE OF LAND. (a) Authorizes the executive director, with the approval of THC, to execute a deed exchanging real property or an interest in real property either as all or partial consideration for other real property or interest in real property. Authorizes the executive director, with approval of THC, to execute a deed selling real property or an interest in real property under the jurisdiction of THC if ownership of the real property is no longer in the best interests of THC.

(b) Requires THC to receive a good and marketable title to all land exchanged under this section.

(c) Requires that all land to be received in the exchange be appraised, and if the land to be received is of greater value, as determined by an independent and competent appraisal, than the state land exchanged, authorizes THC to use funds available for land acquisitions as a partial consideration for the exchange.

(d) Requires that the receipts from the sale of land under this section be used for improving or acquiring other real property dedicated to the same purpose for which the land sold was dedicated.

Sec. 442.0059. EMPLOYEE FUND-RAISING. (a) Provides that this section applies only to the solicitation or receipt of a gift, including money, that has a value of \$500 or more.

(b) Requires THC by rule to adopt policies to govern fund-raising activities by THC employees on behalf of THC. Requires that the rules designate the types of employees who may solicit donations, restrict where and how fund-raising may occur, and establish requirements for reports by employees to the director.

(c) Requires the executive director to approve and manage fund-raising activities by THC employees on behalf of THC in accordance with THC rules.

SECTION 5. Amends Chapter 442, Government Code, by adding Subchapters D and E, as follows:

#### SUBCHAPTER D. OPERATION OF HISTORIC SITES

Sec. 442.101. **AUTHORITY TO CONTRACT.** (a) Authorizes the executive director or the executive director's designee, for the purpose of carrying out the powers, duties, and responsibilities of THC related to historic sites described by Subchapter C (Certain Historic Sites), to negotiate, contract, or enter an agreement for professional services relating to a THC project, including project management, design, bid, and construction administration, and construction, restoration, renovation, or preservation of any building, structure or landscape.

(b) Authorizes THC to contract with any appropriate entity for services necessary to carry out its responsibilities regarding historic sites described by Subchapter C.

(c) Requires THC by rule to adopt policies and procedures consistent with Subchapter A (Professional Services), Chapter 2254 (Professional and Consulting Services), and other applicable state procurement practices for soliciting and awarding contracts under this section.

Sec. 442.102. **CONSTRUCTION OF ROADS BY TEXAS DEPARTMENT OF TRANSPORTATION.** (a) Authorizes THC to contract with the Texas Transportation Commission for the construction and paving of roads in and adjacent to historic sites described by Subchapter C.

(b) Requires that agreements made under this section be made in conformity with Chapter 771 (Interagency Cooperation Act).

Sec. 442.103. **LEASE OF LANDS AND IMPROVEMENTS.** (a) Authorizes THC to lease any land or improvement that is part of a historic site described by Subchapter C to a municipality, county, special district, nonprofit organization, or political subdivision. Prohibits the leased area, after the execution of the lease, from being referred to as a state facility and state funds from being used to operate or maintain the property.

(b) Provides that the conditions and duration of the lease agreement are determined by the agreement of THC and the lessee.

Sec. 442.104. **LEASE OF GRAZING RIGHTS; SALE OF PRODUCTS.** (a) Authorizes THC to lease grazing rights on any historic site described by Subchapter C and to lease from other parties grazing rights necessary for proper livestock management. Authorizes THC to harvest and sell, or sell in place, any timber, hay, livestock, or other product grown on any historic site described by Subchapter C that THC finds to be in excess of natural resource management, educational, or interpretive objectives. Authorizes that timber be harvested only for forest pest management, salvage, or habitat restoration and consistent with good forestry practices and the advice of the Texas Forest Service.

(b) Authorizes THC to agree to accept materials, supplies, or services instead of money as part or full payment for a sale or lease under this subchapter. Prohibits THC from assigning to the materials, supplies, or services accepted as payment under this subsection a value that exceeds their actual market value.

Sec. 442.105. **ESTABLISHMENT OF FEES; REVENUE.** (a) Provides that in setting the amounts of the fees for entering, reserving, or using a historic site described by Subchapter C, THC is required to establish reasonable and necessary fees for the administration of THC programs, and is prohibited from setting fees in amounts that permit THC to maintain unnecessary fund balances.

(b) Authorizes THC to sell any item in the possession of THC in which the state has title, or acquire and resell items if a profit can be made, to provide funding for programs administered by THC.

(c) Authorizes THC to set and charge a fee for the use of a credit card to pay a fee imposed by THC in an amount reasonable and necessary to reimburse THC for the costs involved in the use of the card.

Sec. 442.106. CONCESSIONS. Authorizes THC to operate or grant contracts to operate concessions on the grounds of historic sites described by Subchapter C. Authorizes THC to make rules governing the granting or operating of concessions. Authorizes THC to establish and operate staff concessions, including salaries, consumable supplies and materials, operating expenses, rental and other equipment, and other capital outlays.

Sec. 442.107. PUBLICATIONS ON HISTORIC SITES. (a) Authorizes THC to provide or sell information about historic sites described by Subchapter C to the public, including books, magazines, photographs, prints, and bulletins.

(b) Authorizes THC to enter into contractual agreements for publication of information concerning historic sites described by Subchapter C.

(c) Authorizes THC to receive royalties on THC-owned materials that are sold or supplied to others by THC for publication.

(d) Requires that money received under this section be deposited in the state treasury to the credit of the account from which expenses for the publication were paid.

Sec. 442.108. DEPOSIT OF RECEIPTS. Requires THC to deposit to the credit of the historic site account all revenue, less allowable costs, received from the following sources: the operation of concessions at historic sites described by Subchapter C, lease of grazing rights on a historic site, sale of products grown on a historic site, fines received from violations of rules governing historic sites under Subchapter E, and any other source.

Sec. 442.109. MISTAKEN DEPOSIT. (a) Requires that any funds deposited in the state treasury under this subchapter by THC by mistake of fact or mistake of law be refunded by warrant issued against the fund and credited against the account in the state treasury into which the money was deposited. Requires that refunds necessary to make the proper correction be appropriated by the General Appropriations Act.

(b) Authorizes the comptroller of public accounts to require written evidence from the executive director of THC to indicate the reason for the mistake of fact or law before issuing the refund warrant authorized by Subsection (a).

(c) Provides that this section does not apply to any funds that have been deposited under a written contract.

Sec. 442.110. PROGRAMS FOR THE DEVELOPMENT OF HISTORIC SITES AND STRUCTURES. (a) Authorizes THC to apply to any appropriate agency or officer of the United States for participation in or the receipt of aid from any federal program involving the planning, acquisition, and development of historic sites and structures described by Subchapter C.

(b) Authorizes THC to contract with the United States to plan, acquire, and develop historic sites and structures described by Subchapter C in conformity with any federal act concerning the development of historic sites and structures.

(c) Requires THC to keep financial and other records relating to programs under this section and to furnish to appropriate officials and agencies of the United

States and of this state all reports and information reasonably necessary for the administration of the programs.

Sec. 442.111. FINANCING OF HISTORIC SITE PROGRAMS. (a) Requires that the operation, maintenance, and improvement of historic sites described by Subchapter C be financed from the general revenue fund, the historic sites account, other accounts that may be authorized by law, and donations, grants, and gifts received by THC for these purposes.

(b) Prohibits a donation, grant, or gift accruing to the state or received by THC for the purpose of operating, maintaining, improving, or developing historic sites described by Subchapter C from being used for any purpose other than the operation, maintenance, or developing of historic sites.

#### SUBCHAPTER E. RULES GOVERNING HISTORIC SITES

Sec. 442.201. AUTHORIZATION. Authorizes THC to adopt rules governing the health, safety, and protection of persons and property in historic sites described by Subchapter C under the control of THC, including public water within historic sites.

Sec. 442.202. SCOPE OF RULES. Authorizes that the rules govern:

- (1) the conservation, preservation, and use of state property, whether natural features or constructed facilities;
- (2) the abusive, disruptive, or destructive conduct of persons;
- (3) the activities of site visitors, including camping, swimming, boating, fishing, or other recreational activities;
- (4) the possession of pets or animals;
- (5) the regulation of traffic and parking; and
- (6) conduct that endangers the health or safety of site visitors or their property.

Sec. 442.203. POSTING OF RULES. Requires that all specific or general rules applying to a historic site described by Subchapter C be posted in a conspicuous place at the site. Requires that a copy of the rules be made available on request to persons visiting the site.

Sec. 442.204. REMOVAL FROM SITE. (a) Authorizes any person directly or indirectly responsible for disruptive, destructive, or violent conduct that endangers property or the health, safety, or lives of persons or animals to be removed from a historic site described by Subchapter C for a period not to exceed 48 hours.

(b) Requires the person, before removal under this section, to be given notice of the provisions of this section and an opportunity to correct the conduct justifying removal.

(c) Authorizes a court of competent jurisdiction to enjoin a person from reentry to the historic site described by Subchapter C, on cause shown, for any period set by the court.

Sec. 442.205. ENFORCEMENT OF RULES. Authorizes that rules adopted under this subchapter be enforced by any peace officer. Authorizes that a notice to appear be issued by a peace officer for a violation of a rule on a form prescribed by THC.

Sec. 442.206. EFFECT OF RULES. Provides that a rule adopted under this subchapter does not amend or repeal any penal law of this state.

Sec. 442.207. PENALTY. Provides that a person who violates this subchapter commits an offense that is a Class C misdemeanor.

SECTION 6. Amends Section 651.004, Government Code, by adding Subsection (g) to provide that THC is not required to comply with management-to-staff ratio requirements of this section with respect to employees located in field-based operations.

SECTION 7. Amends Section 2166.003(a), Government Code, to provide that unless otherwise provided, this chapter does not apply to certain projects, including a project constructed by and for the THC. Makes nonsubstantive changes.

SECTION 8. Amends Section 13.001(a), Parks and Wildlife Code, to provide that except as otherwise provided by law, certain areas and sites are under the Texas Parks and Wildlife Department's (TPWD) control and custody, including all historical sites under the jurisdiction of TPWD, rather than all historical sites acquired by TPWD.

SECTION 9. Amends Section 13.0052, Parks and Wildlife Code, to require TPWD to periodically prepare reports on plans to preserve and develop historical sites under the jurisdiction of TPWD in this state.

SECTION 10. Amends Section 13.010, Parks and Wildlife Code, to authorize TPWD and THC to cooperate to locate, designate, and suitably mark historic grounds, battlefields, and other historic spots in Texas as historic sites.

SECTION 11. Effective date: upon passage or September 1, 2011.