

## **BILL ANALYSIS**

S.B. 1518  
By: Eltife  
Culture, Recreation & Tourism  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Interested parties express concern that certain statutory provisions relating to the Parks and Wildlife Department's (TPWD) authority over certain historic properties were overlooked when a recent legislature transferred authority over those properties from TPWD to the Texas Historical Commission. S.B. 1518 seeks to address this oversight by amending statutory provisions relating to the powers and duties of the Texas Historical Commission to provide for the commission's authority over certain historic sites.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Historical Commission in SECTIONS 3, 4, and 5 of this bill.

### **ANALYSIS**

S.B. 1518 amends the Government Code to entitle the Texas Historical Commission to obtain criminal history record information maintained by the Department of Public Safety 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 the commission. The bill prohibits such criminal history record information obtained by the commission 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 and requires the commission to collect and destroy criminal history record information that relates to a person immediately after the commission uses the information to make an employment or other decision related to the person or to take a personnel action relating to the person who is the subject of the information.

S.B. 1518 prohibits the commission from obtaining criminal history record information under the bill's provisions unless the commission 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 the commission. The bill requires the policies and procedures to provide that the hiring official will determine whether the individual is qualified for employment based on certain factors.

S.B. 1518 authorizes the executive director of the commission to waive entrance fees and facility use fees for historic sites under the commission's jurisdiction for a volunteer to assist in the accomplishment of the volunteer's service to the commission and to expend funds appropriated to the commission 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.

S.B. 1518 prohibits the disclosure of certain personal information of a person who purchases customer products, licenses, or services from the commission, except as authorized under the

bill's provisions. The bill establishes that state open records law does not apply to such customer information and requires the commission by rule to adopt policies relating to the release of customer information, the use of the customer information by the commission, and the sale of a mailing list consisting of the names and addresses of persons who purchase customer products, licenses, or services. The bill requires the commission to include in its policies a method for a person by request to exclude information about the person from a mailing list sold by the commission and authorizes the commission to disclose customer information to a federal or state law enforcement agency if the agency provides a lawfully issued subpoena. The bill establishes that the commission and its officers and employees are immune from civil liability for an unintentional violation of the bill's provisions relating to the disclosure of customer information and establishes that, for purposes of such provisions, a reference to the Texas Historical Commission includes a reference to an agent of the commission.

S.B. 1518 authorizes the commission to acquire by purchase, gift, or other manner historic sites meeting the following criteria:

- where events occurred that represent an important aspect of the cultural, political, economic, military, or social history of the nation or state;
- significantly associated with the lives of outstanding historic persons or with an important event that represents a great ideal or idea;
- embodying the distinguishing characteristics of an architectural type that is inherently valuable for study of a period, style, or method of construction;
- that contribute significantly to the understanding of aboriginal humans in the nation or state; or
- that are of significant geologic interest relating to prehistoric animal or plant life.

The bill requires the commission to restore and maintain each historic site acquired in such a way for the benefit of the general public and authorizes the commission to enter into interagency contracts for that purpose. The bill requires the commission to formulate plans for the preservation and development of historic sites and, before formulating a plan for a specific site, to conduct an archeological survey of the site. The bill requires the commission, in formulating plans, to consider specified factors.

S.B. 1518 authorizes the commission to solicit and receive donations of land for public purposes and to refuse donations of lands not acceptable for public purposes. The bill authorizes the commission, if title to a site has vested in the commission and if ownership of the site is no longer in the commission's best interest, to transfer the title to certain entities under specific conditions.

S.B. 1518 authorizes the executive director, with the commission's approval, 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 and to execute a deed selling real property or an interest in real property under the commission's jurisdiction if ownership of the real property is no longer in the best interest of the commission. The bill requires the commission to receive a good and marketable title to all land exchanged in such a manner. The bill requires all land to be received in the exchange to be appraised and authorizes the commission, if the land to be received is of greater value than the state land exchanged, as determined by an independent and competent appraisal, to use funds available for land acquisitions as a partial consideration for the exchange. The bill requires the receipts from the sale of land to be used for improving or acquiring other real property dedicated to the same purpose for which the land sold was dedicated.

S.B. 1518 requires the commission by rule to adopt policies to govern fund-raising activities by commission employees on behalf of the commission. The bill requires the rules to 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. The bill requires the

executive director to approve and manage fund-raising activities by commission employees on behalf of the commission in accordance with commission rules. The bill makes its provisions relating to employee fund-raising applicable only to the solicitation or receipt of a gift, including money, that has a value of \$500 or more.

S.B. 1518 sets out provisions relating to the commission's operation of historic sites with regard to the authority of the executive director or the executive director's designee to negotiate, contract, or enter an agreement for professional services relating to a commission project and the commission's authority to contract with an appropriate entity for services necessary to carry out its responsibilities regarding historic sites. The bill requires the commission by rule to adopt policies and procedures consistent with provisions of law relating to professional services and professional and consulting services and other applicable state procurement practices for soliciting and awarding such contracts. The bill authorizes the commission to contract with the Texas Transportation Commission for the construction and paving of roads in and adjacent to historic sites and requires such agreements to be made in conformity with the Interagency Cooperation Act.

S.B. 1518 sets out provisions relating to the commission's authority to lease any land or improvement that is part of a historic site to certain political subdivisions and other entities, its authority to lease grazing rights on any historic site and to lease from other parties grazing rights necessary for proper livestock management, and its authority to harvest and sell, or sell in place, certain products grown on any historic site that the commission finds to be in excess of natural resource management, educational, or interpretive objectives.

S.B. 1518 requires the commission, in setting the amounts of the fees for entering, reserving, or using a historic site, to establish reasonable and necessary fees for the administration of commission programs and prohibits the commission to set such fees in amounts that permit the commission to maintain unnecessary fund balances. The bill authorizes the commission to sell any item in its possession in which the state has title, or acquire and resell items if a profit can be made, to provide funding for programs administered by the commission and authorizes the commission to set and charge a fee for the use of a credit card to pay a fee imposed by the commission.

S.B. 1518 authorizes the commission to operate or grant contracts to operate concessions on the grounds of historic sites, to make rules governing the granting or operating of concessions, and to establish and operate staff concessions. The bill authorizes the commission to provide or sell information about historic sites to the public, to enter into contractual agreements for publication of information concerning historic sites, and to receive royalties on commission-owned materials that are sold or supplied to others by the commission for publication. The bill requires money received under these provisions to be deposited in the state treasury to the credit of the account from which expenses for the publication were paid.

S.B. 1518 requires the commission to deposit to the credit of the historic site account all revenue, less allowable costs, received from the operation of concessions at historic sites, 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, and any other source. The bill requires any funds deposited in the state treasury by the commission under the provisions of the bill relating to the operation of historic sites by mistake of fact or mistake of law to be refunded by warrant issued against the fund and credited against the account in the state treasury into which the money was deposited. The bill requires refunds necessary to make the proper correction to be appropriated by the General Appropriations Act. The bill authorizes the comptroller of public accounts to require written evidence from the executive director to indicate the reason for the mistake of fact or law before issuing the refund warrant and establishes that provisions of the bill related to mistaken deposits do not apply to any funds that have been deposited under a written contract.

S.B. 1518 authorizes the commission 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. The bill authorizes the commission to contract with the United States to plan, acquire, and develop historic sites and structures in conformity with any federal act concerning the development of such sites and structures. The bill requires the commission to keep financial and other records relating to such programs and to furnish to appropriate officials and agencies of the United States and of Texas all reports and information reasonably necessary for the administration of the programs. The bill sets out provisions relating to the financing of the operation, maintenance, and improvement of historic sites.

S.B. 1518 authorizes the commission to adopt rules governing the health, safety, and protection of persons and property in historic sites under the commission's control, including public water within historic sites, and authorizes the rules to govern specified activities. The bill sets out requirements relating to the posting of specific or general rules applying to a historic site and the availability of copies of the rules on request to persons visiting the site. The bill authorizes the removal of persons from a historic site for certain disruptive, destructive, or violent conduct for a specified period of time, requiring notification before such removal of the relevant provisions of the bill and an opportunity to correct the conduct, and authorizing a court of competent jurisdiction to enjoin a person from reentry to the historic site on cause shown, for any period set by the court. The bill authorizes rules adopted under the bill's provisions to be enforced by any peace officer and authorizes a notice to appear to be issued by a peace officer for violation of a rule on a form prescribed by the commission. The bill specifies that a rule adopted under the bill's provisions does not amend or repeal any penal law of Texas and makes it a Class C misdemeanor offense to violate such a rule.

S.B. 1518 establishes that the commission is not required to comply with statutory provisions relating to management-to-staff ratio requirements with respect to employees located in field-based operations.

S.B. 1518 expands an exemption of certain buildings and projects from the applicability of provisions of law relating to building construction and acquisition to include a project constructed by and for the commission.

S.B. 1518 amends the Parks and Wildlife Code, in provisions of law relating to the control of certain areas and sites by the Parks and Wildlife Department (TPWD), to specify that such sites include all historical sites under TPWD's jurisdiction, rather than all historical sites acquired by TPWD. The bill specifies that provisions of law requiring TPWD to periodically prepare reports on plans to preserve and develop historical sites in Texas apply to such sites under the jurisdiction of TPWD. The bill authorizes TPWD to cooperate with the commission to locate, designate, and suitably mark historic grounds, battlefields, and other historic spots in Texas as historic sites, rather than authorizing TPWD to take such actions.

#### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.