

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 1422
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Natural Resources & Economic Development
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Historical Commission (THC) protects and preserves the state's historic and prehistoric resources for the use, education, enjoyment, and economic benefit of present and future generations. THC is subject to abolishment under the Sunset Act on September 1, 2019, unless continued by the legislature.

Overall, the Sunset Advisory Commission (Sunset) found the agency to be well-run, particularly with regard to its core preservation functions; however, the agency needs to improve its newer, less established programs—managing state historic sites and supporting local heritage tourism development. For example, Sunset recommends establishing clear contract requirements and goals for the Heritage Trails program. Other recommendations would transfer eight historic sites not attached to a state park from the Texas Parks and Wildlife Department (TPWD) to THC and provide a method for the sale of certain surplus goods associated with curatorial collections. (Original Author's/Sponsor's Statement of Intent)

C.S.H.B. 1422 amends current law relating to the continuation and functions of the Texas Historical Commission.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Historical Commission in SECTION 3 (Sections 442.0045 and 442.0088, Government Code) of this bill.

Rulemaking authority previously granted to the Texas Parks and Wildlife Department is transferred to the Texas Historical Commission in SECTION 15 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 442.002(k), Government Code, to provide that, unless continued in existence by Chapter 325 (Texas Sunset Act), Government Code, the Texas Historical Commission (THC) is abolished and this chapter (Texas Historical Commission) expires September 1, 2031, rather than September 1, 2019.

SECTION 2. Amends Section 442.0021, Government Code, by amending Subsection (b) and adding Subsection (d), as follows:

(b) Deletes existing Subdivisions (4)–(5), creates Subdivisions (4) and (5)(A) from existing text, and renumbers the following subdivisions accordingly. Requires the training program to provide the person with information regarding:

- (1) the law governing THC operations, rather than the legislation that created THC;
- (2) makes no changes to this subdivision;
- (3) the scope of and limitations on the rulemaking authority of THC;
- (4) makes no further changes to this subdivision;

(5) the requirements of:

(A) laws relating to open meetings, public information, administrative procedure, and disclosing conflicts of interest, rather than conflicts of interest; and

(B) other laws applicable to members of THC in performing their duties; and

(6) makes no further changes to this subdivision.

(d) Requires the executive director of THC (executive director) to create a training manual that includes the information required by Subsection (b). Requires the executive director to distribute a copy of the training manual annually to each member of THC. Requires each member of THC to sign and submit to the executive director a statement acknowledging that the member received and has reviewed the training manual.

SECTION 3. Amends Subchapter A, Chapter 442, Government Code, by adding Sections 442.0045 and 442.0088, as follows:

Sec. 442.0045. DELEGATION OF CERTAIN POWERS AND DUTIES. (a) Authorizes THC by order or rule, except as provided by Subsection (b), to delegate to the executive director the authority to perform the duties or exercise the powers of THC under this chapter (Texas Historical Commission) or other law, including Chapter 191 (Antiquities Code), Natural Resources Code.

(b) Prohibits THC from delegating to the executive director the following powers and duties:

(1) proposing and adopting THC policies and rules;

(2) developing and approving THC's strategic plan under Chapter 2056 (Strategic Plans of Operation) and annual operations plan and periodically updating and reviewing those plans;

(3) approving THC's legislative appropriations request;

(4) approving THC's biennial budget and any significant amendments to that budget;

(5) approving the statewide comprehensive preservation plan;

(6) providing information to the legislature regarding THC's budget and policies;

(7) hiring, evaluating, terminating, and setting the compensation of the executive director;

(8) formally accepting gifts and grants to THC;

(9) establishing advisory committees and appointing the members of those committees;

(10) designating, and removing the designation of, State Archeological Landmarks;

(11) excusing a commissioner's absence from a meeting of THC;

- (12) approving the designation and removal of Recorded Texas Historic Landmarks, historic cemeteries, and Official Texas Historical Markers;
- (13) designating official main street cities;
- (14) awarding historic courthouse preservation program grants, certified local government grants, Texas preservation trust fund account grants, and all other grants;
- (15) selecting the winners of the governor's award for historic preservation and other competitive statewide awards awarded by THC;
- (16) approving curatorial facilities to hold state-associated collections that are held in trust;
- (17) acquiring and disposing of real property;
- (18) establishing fees for THC services;
- (19) approving amendments to contracts entered into by THC if the amendment extends the contract by six or more months or increases the contract price by 10 percent or more;
- (20) identifying and defining the relationship between THC and any affiliated nonprofit organizations;
- (21) raising issues regarding the performance of THC's staff and the operation of agency programs with the chair, the executive director, or the appropriate deputy executive director;
- (22) determining whether a property offered to THC should be accepted into THC's land banking program or as a historic site; and
- (23) recommending, in partnership with the Texas State Historical Association, a nominee for appointment by the governor as state historian.

(c) Authorizes a delegation under this section to be amended or withdrawn by THC vote.

Sec. 442.0088. TEXAS HERITAGE TRAILS PROGRAM. (a) Authorizes THC to establish and administer the Texas Heritage Trails Program to promote tourism to heritage and cultural attractions in this state.

(b) Authorizes THC to contract with one or more nonprofit organizations to fulfill THC's duties under this section.

(c) Requires THC to adopt rules to administer the Texas Heritage Trails Program, including rules defining the principles of heritage tourism and relating to contracts THC enters into with nonprofit organizations. Requires rules adopted under this subsection relating to contracts with nonprofit organizations to require each contract to clearly establish:

- (1) the role of the nonprofit organization in promoting heritage tourism;
- (2) the nature of the relationship between THC and the nonprofit organization;
- (3) the performance expectations for the nonprofit organization;

- (4) requirements and expectations regarding the nonprofit organization's employees;
- (5) THC's expectations regarding ownership of any literature, media, or other products developed or produced by the nonprofit organization to promote heritage tourism during the course of the contract;
- (6) THC's long-term goals for the program and the nonprofit organization's role in meeting those goals;
- (7) a system for evaluating the nonprofit organization's overall performance, including the organization's effectiveness in meeting the performance expectations described by Subdivision (3); and
- (8) the types of support, other than financial support, THC will provide to the nonprofit organization to assist in the implementation and administration of the Texas Heritage Trails Program.

SECTION 4. Amends Section 442.072(a), Government Code, as follows:

(a) Provides that the following historic sites and parks are under THC's jurisdiction:

- (1)–(6) makes no changes to these subdivisions;
- (7) Fanthorp Inn State Historic Site;
- (8) creates this subdivision from existing text and makes no further changes;
- (9)–(13) redesignates existing Subdivisions (8)–(12) as these subdivisions;
- (14) Lipantitlan State Historic Site;
- (15) redesignates existing Subdivision (13) as this subdivision;
- (16) Mission Dolores State Historic Site;
- (17) Monument Hill and Kreische Brewery State Historic Sites;
- (18) National Museum of the Pacific War;
- (19)–(20) redesignates existing Subdivisions (14)–(15) as these subdivisions;
- (21) Sam Rayburn House State Historic Site;
- (22)–(24) redesignates existing Subdivisions (16)–(18) as these subdivisions;
- (25) Washington-on-the-Brazos State Historic Site; and
- (26) deletes existing Subdivisions (19), (20), and (21) and creates this subdivision from existing Subdivision (21).

SECTION 5. Amends Chapter 442, Government Code, by adding Subchapter F, and adding a heading to that subchapter, to read as follows:

SUBCHAPTER F. SAN JACINTO BATTLEGROUND STATE HISTORIC SITE

SECTION 6. Transfers Section 22.011 and 22.016, Parks and Wildlife Code, to Subchapter F, Chapter 442, Government Code, as added by this Act, redesignates them as Sections 442.251, and 442.252, Government Code, and amends them as follows:

Sec. 442.251. JURISDICTION. (a) Creates this subsection from existing text. Provides that the San Jacinto Battleground State Historic Site, rather than the San Jacinto Battleground, is under the jurisdiction of THC, rather than the Texas Parks and Wildlife Department (TPWD).

(b) Provides that the San Jacinto Battleground State Historic Site is a historic site for purposes of Subchapter C (Certain Historic Sites).

Sec. 442.252. SAN JACINTO MUSEUM OF HISTORY ASSOCIATION. Makes no further changes to this section.

SECTION 7. Transfers Subchapter H, Chapter 22, Parks and Wildlife Code, to Chapter 442, Government Code, redesignates it as Subchapter G, Chapter 442, Government Code, and amends it as follows:

SUBCHAPTER G. PORT ISABEL LIGHTHOUSE STATE HISTORICAL MONUMENT AND PARK

Sec. 442.271. JURISDICTION. (a) Creates this subsection from existing text. Provides that the Port Isabel Lighthouse is a state historical monument and park and is under the jurisdiction of THC, rather than TPWD.

(b) Provides that the Port Isabel Lighthouse State Historical Monument and Park is a historic site for purposes of Subchapter C.

Sec. 442.272. New heading: POWERS OF COMMISSION. Authorizes THC, rather than TPWD, to rehabilitate, maintain, and preserve the property of the park, and to collect entrance fees for admission to the park or operate it on a concession basis under the provisions of this chapter, rather than code.

SECTION 8. Amends Subchapter Z, Chapter 2175, Government Code, by adding Section 2175.909, as follows:

Sec. 2175.909. SALE OF CERTAIN HISTORIC PROPERTY; PROCEEDS OF SALE.

(a) Defines "qualifying collection" for purposes of this section.

(b) Provides that this section applies only to a state agency that maintains a qualifying collection, that is authorized to dispose of surplus or salvage property under Section 2175.065 (Delegation of Authority to State Agency), and the governing body of which has adopted a written policy governing the care and preservation of the qualifying collection, including procedures relating to the deaccession of an item from the collection.

(c) Authorizes the state agency to deaccession an item from the agency's qualifying collection if the governing body determines that deaccession of the item is appropriate under the agency's written policy governing the care and preservation of the collection.

(d) Authorizes a state agency and the Texas Facilities Commission (TFC) to sell a deaccessioned item in the manner provided by Subchapter D (Disposition of Surplus or Salvage Property). Requires TFC, before the sale of the item, to verify that the state agency's governing body complied with Subsection (c).

(e) Requires proceeds from the sale of the deaccessioned item by a state agency, notwithstanding Section 2175.191 (Proceeds of Sale), to be deposited to the credit of a dedicated account in the general revenue fund in the manner prescribed by Subsection (f).

(f) Requires the comptroller of public accounts of the State of Texas (comptroller) to separately account for the amount of money deposited to the credit of the

account under Subsection (e) resulting from the sale of deaccessioned items by each state agency. Authorizes money deposited to the credit of the account to be appropriated only to the state agency for which the comptroller deposited the money to the account for the care and preservation of the agency's qualifying collection.

SECTION 9. Amends Section 21.104, Parks and Wildlife Code, as follows:

Sec. 21.104. CONTRACTS AUTHORIZED. Authorizes TPWD to contract with any state or federal agency or with any other person to accomplish the functions prescribed by Sections 21.102(1) (relating to authorizing TPWD to use the development fund only for acquiring state park sites from certain entities) and (2) (relating to authorizing TPWD to use the development fund only for improving, developing, beautifying, and equipping acquired park sites), rather than Subdivisions (1) and (2) of Section 22.102 of this code.

SECTION 10. Amends Section 151.801(c), Tax Code, as follows:

(c) Requires the proceeds from the collection of the taxes imposed by this chapter (Limited Sales, Excise, and Use Tax) on the sale, storage, or use of sporting goods to be deposited as follows:

- (1) an amount equal to 93.4 percent, rather than 94 percent, of the proceeds is required to be credited to TPWD and deposited as specified in the Parks and Wildlife Code; and
- (2) an amount equal to 6.6 percent, rather than six percent, of the proceeds is required to be credited to THC and deposited as specified in Section 442.073 (Historic Site Account), Government Code.

SECTION 11. Provides that the following provisions are repealed:

- (1) Repealer: Section 442.0081(g) (relating to requiring THC to appoint a Texas Courthouse Preservation Program Advisory Committee), Government Code;
- (2) Repealer: Section 442.015(d) (relating to requiring THC to appoint an advisory board composed of certain individuals), Government Code.

Repealer: Section 442.015(e) (relating to a provision that members of the advisory board serve two-year terms expiring February 1 of each odd-numbered year and are not entitled to compensation for services, but are entitled to reimbursement for expenses), Government Code.

Repealer: Section 442.015(f) (relating to requiring the advisory board to recommend to THC rules for administering certain provisions), Government Code.

- (3) Repealer: Subchapter A (Fannin State Battleground), Chapter 22, Parks and Wildlife Code.

- (4) Repealer: the heading to Subchapter B (San Jacinto Battleground), Chapter 22, Parks and Wildlife Code.

- (5) Repealer: Section 22.012 (San Jacinto Historical Advisory Board), Parks and Wildlife Code.

Repealer: Section 22.013 (Meetings), Parks and Wildlife Code.

Repealer: Section 22.014 (Powers of the Board), Parks and Wildlife Code.

Repealer: Section 22.015 (Data), Parks and Wildlife Code.

SECTION 12. (a) Provides that Section 442.0021, Government Code, as amended by this Act, except as provided by Subsection (b) of this section, applies to a member of THC appointed before, on, or after the effective date of this Act.

(b) Provides that a member of THC who, before the effective date of this Act, completed the training program required by Section 442.0021, Government Code, as that law existed before the effective date of this Act, is required to complete additional training only on subjects added by this Act to the training program as required by Section 442.0021, Government Code, as amended by this Act. Prohibits a THC member described by this subsection from voting, deliberating, or being counted as a member in attendance at a meeting of THC held on or after December 1, 2019, until the member completes the additional training.

SECTION 13. (a) Requires THC, not later than November 1, 2019, to adopt rules under Section 442.0088, Government Code, as added by this Act.

(b) Makes application of Section 442.0088(c), Government Code, as added by this Act, prospective.

SECTION 14. Makes application of Section 2175.909, Government Code, as added by this Act, prospective.

SECTION 15. (a) Defines "historic site" for purposes of this section.

(b) Provides that on September 1, 2019, the following are transferred to THC:

(1) each historic site described by Subsection (a) of this section and all obligations and liabilities of TPWD relating to those sites;

(2) all unobligated and unexpended funds appropriated to TPWD designated for the administration of those sites;

(3) all equipment and property of TPWD used for the administration of or related to those sites; and

(4) all files and other records of TPWD kept by TPWD regarding those sites.

(c) Provides that a rule adopted by TPWC that is in effect immediately before September 1, 2019, and that relates to a historic site is, on September 1, 2019, a rule of THC and remains in effect until amended or repealed by THC.

(d) Provides that the transfer under this section does not diminish or impair the rights of a holder of an outstanding bond or other obligation issued by TPWD in relation to the support of a historic site.

(e) Provides that, beginning September 1, 2019, a reference in the Parks and Wildlife Code or other law to a power, duty, obligation, or liability of TPWD or TPWC that relates to a historic site is a reference to the THC. Provides that THC is the successor agency to TPWD and TPWC for a historic site.

(f) Authorizes TPWD, before September 1, 2019, to agree with THC to transfer any property of TPWD to THC to implement the transfer required by this section.

(g) Requires TPWD, until a historic site is transferred to THC in accordance with this section, to continue to operate and maintain the site under applicable law as it existed on January 1, 2018.

(h) Effective date, this section: upon passage or the 91st day after the last day of the legislative session.

SECTION 16. Authorizes TPWD, notwithstanding any other provision of this Act, if on or before September 1, 2019, TPWD has applied for a grant for which TPWD is required to possess legal title to the San Jacinto Battleground State Historic Site, to retain legal title to the site for purposes of receiving the grant until the earlier of:

- (1) the date on which the grant application is denied; or
- (2) September 1, 2021.

SECTION 17. Effective date, except as otherwise provided by this Act: September 1, 2019.