

- SUBJECT:** Reorganizing the parole board and authorizing parole commissioners
- COMMITTEE:** Corrections — committee substitute recommended
- VOTE:** 4 ayes — Allen, Hopson, Haggerty, Stick
0 nays
3 absent — Alonzo, Farrar, Mabry
- SENATE VOTE:** On final passage, May 15 — voice vote (Harris recorded nay)
- WITNESSES:** For — *(Registered, but did not testify:)* Elizabeth Jobiln, Texas Inmate Families Association
Against — None
On — Gerald Garrett, Texas Board of Pardons and Paroles; Allen Place, Texas Criminal Defense Lawyers Association
- BACKGROUND:** The Texas Constitution, Art. 4, sec. 11 requires the Legislature to establish a Board of Pardons and Paroles. Government Code, sec. 508 establishes an 18-member board appointed by the governor with the advice and consent of the Senate. Members are full-time and salaried and serve six-year terms, with the governor designating the board chair as the presiding officer. A six-member committee of board members, designated by the governor, serves as a policy committee, whose duties include adopting the board's rules.

The board shares responsibility for the parole system with the parole division of the Texas Department of Criminal Justice (TDCJ). The board, often working in panels of three, determines which prisoners are released on parole and the conditions of parole and mandatory supervision. The board also makes decisions about revoking parole and mandatory supervision. TDCJ's parole division supervises parolees after they have been released.
- DIGEST:** CSSB 1678 would reduce the number of members on the Board of Pardons and Paroles from 18 to seven, authorize the board to hire parole

commissioners to make decisions about parole, and eliminate the current board policy committee. The governor would continue to appoint the board's presiding officer, who would be the administrative head of the board and would hire and supervise the parole commissioners.

Parole commissioners, along with the seven board members, would determine which inmates were released on parole or mandatory supervision, the conditions of parole and mandatory supervision, and the continuation, modification, and revocation of parole and mandatory supervision. Board members and parole commissioners would act in panels of three to make their decisions, and the presiding officer, rather than the board, would designate the composition of each panel. Panels could be composed of any combination of board members and commissioners.

The presiding officer would have broad authority to establish policies and procedures to further the administration of the board's business and would take over some of the current duties of the policy board, including establishing caseloads and work hours for board members, updating parole guidelines, reporting to the Legislature on the board's activities, and hiring board employees.

The parole board would take over some of the current duties of the policy board, including adopting rules relating to the decision-making process used by the board; developing and implementing training programs for board members, parole commissioners, and employees; preparing a procedural manual and handbook; developing and implementing policies for when board members or parole commissioners should disqualify themselves from voting; and adopting rules relating to inmate eligibility for parole, the conduct of parole hearings, and conditions to be imposed on parolees.

The board would be subject to the open meetings law and the Administrative Procedure Act, except that, as provided by current law, certain provisions of the laws would not apply to the board's hearings or interviews relating to granting, rescinding, or revoking parole.

The governor would be required to appoint new members to the board by January 1, 2004, and the terms of the board members serving on December 31, 2003, would expire with the appointment of the new members. The

governor could, but would not be required to, appoint as new members persons who were serving on the board before January 1, 2004.

The bill would take effect September 1, 2003.

**SUPPORTERS
SAY:**

CSSB 1678 is necessary to improve the workings of the Board of Pardons and Paroles and to improve the board's organizational structure and chain of command. The current 18-member board is too large to handle efficiently both its policy making role and its day-to-day role in deciding whether to release inmates on parole. The board is larger than most governing boards, making it difficult to have meetings, and often is unwieldy when making decisions about administrative matters. It also can be difficult to ensure that 18 gubernatorial appointees follow the board's procedures and rules when there is no clear chain of command among the board members. While a policy board was created in 1997 to try and address these issues, it too has proved problematic. It also is unusual for appointed board members to be salaried and working like full-time state employees.

This bill would address these problems by reducing the board to a more manageable size so that it efficiently could make decisions relating to procedures and board policy and would authorize the hiring of parole commissioners who would work with the board members making the day-to-day parole decisions. Parole commissioners, common in other states, would be criminal justice professionals and would be trained in the parole decision-making process and on the use of parole guidelines. The bill clearly would articulate the duties and responsibilities of the board and the presiding officer.

Parole board members and parole commissioners would continue to have independence and discretion in making decisions about parole, and the workings of the board would not be disrupted by the bill. The board has policies and rules in place, and the newly appointed board members and newly hired commissioners could include persons currently on the board.

Because of constitutional requirements, board members — and not parole commissioners — would continue to make decisions about commutations and pardons, and because of other statutory provisions, board members would continue to make decisions about parole for offenders convicted of capital murder, certain sex offenses, and certain repeat offenders.

The Legislature would have adequate oversight of the number of commissioners through the appropriations process and regular committee oversight.

CSSB 1678 would move current requirements that some actions of the board be subject to the open meetings law and Administrative Procedure Act to another section of the code because the section where they exist currently would be repealed. These provisions would not change current law or procedures and certain hearings and interviews would continue to be exempt from these requirements.

This bill should not amend current law to require board members to meet as a body to consider clemency in capital murder cases. Courts have ruled that current board procedure is constitutional, and instituting such a requirement about capital cases could open the door for litigation against the board, resulting in a referendum or moratorium on the death penalty. CSSB 1678 is not the proper vehicle for such a change in state law.

**OPPONENTS
SAY:**

The current structure of the board was created in 1989 to address difficulties with having a smaller appointed board that worked in conjunction with hired parole commissioners, and CSSB 1678 would be an unwise move back to that problematic structure. The current board allows for gubernatorial appointees — instead of bureaucrats hired as parole commissioners — to be held accountable for the decisions they make concerning public safety. The parole board is a constitutionally mandated board, and its authority should not be diluted by having state employees performing the same job as appointed board members.

This bill could lead to disruptions in the parole process while newly hired parole commissioners got up to speed on board policies and procedures.

CSSB 1678 does not specify the number of commissioners that could be hired, leaving the potential for unlimited growth in this area of government or even leaving the system short handed if fewer than necessary were hired.

**OTHER
OPPONENTS
SAY:**

To help prevent the execution of innocent inmates, hold board members more accountable for their decisions, and make certain decisions more transparent to the public, CSSB 1678 should include a requirement that the board meet as

a body to consider clemency in capital cases and that the decisions of individual board members be announced publicly.

NOTES:

The committee substitute removed a provision in the Senate engrossed version that would have required the Board of Pardons and Paroles to meet as a body or by telephone conference when considering clemency in capital murder cases and would have required board members to announce publicly their decision concerning clemency in capital cases.