

SUBJECT: Funding and jurisdiction of TPWD and Texas Historical Commission

COMMITTEE: Culture, Recreation, and Tourism — committee substitute recommended

VOTE: 6 ayes — Hilderbran, Kuempel, Dukes, Homer, O'Day, Phillips
1 nay — D. Howard

WITNESSES: For — J.P. Bryan, Texas Historical Commission; Priscilla Garrett, Friends of Landmark Inn; Brad Griggs, Texas Recreation and Park Society; Marcie Ince, San Antonio Conservation Society; Michael Moore, Stephen F. Austin Park Association; John Nau, Texas Historical Commission; Carole S. Romano, Castroville Conservation Society; Peggy Spradley, Sealy Convention & Visitors Bureau; and 10 others (*Registered, but did not testify*: Lareatha H. Clay; John W. Crain; Louis C. Romano)

Against — John E. Cobb, Friends of Fort McKavett; Barry Duncan, Supporters of Sebastopol; Linda Evans, Texans for State Parks; Myron J. Hess, National Wildlife Federation; Ken Kramer, Lone Star Chapter of Sierra Club; Beth McDonald, Texans for State Parks; Evelyn L. Merz, Sierra Club - Houston Group; (*Registered, but did not testify*: Randy Billingsley)

On — Larry Oaks, Texas Historical Commission; (*Registered, but did not testify*: Terry Colley, Deputy Executive Director of Texas Historical Commission; Walt Dabney, Texas Parks and Wildlife Department)

BACKGROUND: Tax Code, sec. 151.801 credits to the Texas Parks and Wildlife Department (TPWD) \$1.125 million per month and 40 percent of the amount above \$27 million per year, not to exceed \$32 million in sporting goods tax revenues collected each year.

Government Code, sec. 403.095 requires the comptroller to reduce the balances of dedicated accounts that on August 31, 2007, have unexpended balances that exceed the fund's annual appropriations and recommit these funds for general governmental purposes.

Government Code, sec. 651.004 requires state agencies to achieve a management-to-staff ratio of one manager for each 11 staff members,

unless it appeals to the Legislative Budget Board, which may approve an alternative ratio.

Parks and Wildlife Code, sec. 11.043 establishes the Texas Parks and Wildlife Conservation and Capital Account, which can be used for land acquisition and development; maintenance; or operation of parks, fisheries, and wildlife. This fund is allocated money from revenue bonds and from Tax Code, sec. 151.801, after allocations to the State Parks Account and the Texas Recreation and Parks Account.

Government Code, sec. 442.019 allows TPWD, by interagency agreement, to transfer historical sites to the Texas Historical Commission (THC) and in so doing would include a transfer of all rights, powers, duties, obligations, functions, activities, property, and programs of TPWD to THC. It also allows THC to enter into an agreement with a non-profit corporation for the expansion, renovation, management, operation, or financial support of the site.

DIGEST:

CSHB 12 would require 94 percent of sporting good sales tax collections each biennium to be credited to the Texas Parks and Wildlife Department and 6 percent to the Texas Historical Commission, in conformity with Tax Code, sec. 151.801.

This bill would establish an Historic Site Account that could be used to administer, operate, preserve, repair, expand, or maintain historic sites and was exempt from Government Code, sec. 403.095. The fund would consist of:

- the proceeds collected for THC under Tax Code, sec. 151.801;
- transfers to the account;
- interest earned on the account;
- fees and other revenue from operating historic sites; and
- grants and donations.

The bill would credit the State Parks Account with 74 percent of the proceeds credited to the TPWD under Tax Code, sec. 151.801.

The bill would establish and credit the Large County and Municipal Recreation and Parks Account with 10 percent of the proceeds credited to TPWD under Tax Code, sec. 151.801 each biennium and redefine the account to provide grants only to a county or municipality with a

population more than 500,000.

The bill would credit the Texas Recreation and Parks Account with 15 percent of the proceeds credited to TPWD under Tax Code, sec. 151.801 each biennium and redefine the account to provide grants only to:

- a county or municipality with a population less than 500,000; and
- any other political subdivision that was not a county or municipality.

This bill would credit the remaining 1 percent of the proceeds credited to the TPWD under Tax Code, sec. 151.801 to the Texas Parks and Wildlife Conservation and Capital Account.

CSHB 12 would transfer the following historic sites and all associated obligations and liabilities, unobligated and unexpended funds, equipment and property, rules, and files from TPWD to THC on or after January 1, 2008:

- Acton State Historic Site;
- Caddoan Mounds State Historic Site;
- Casa Navarro State Historic Site;
- Confederate Reunion Grounds State Historic Site;
- Eisenhower Birthplace State Historic Site;
- Fannin Battleground State Historic Site;
- Fort Griffin State Historic Site;
- Fort Lancaster State Historic Site;
- Fort McKavett State Historic Site;
- Fulton Mansion State Historic Site;
- Landmark Inn State Historic Site;
- Levi Jordan State Historic Site;
- Magoffin Home State Historic Site;
- Sabine Pass Battleground State Historic Site;
- Sam Bell Maxey House State Historic Site;
- San Felipe State Historic Site;
- Starr Family Home State Historic Site; and
- Varner-Hogg Plantation State Historic Site.

The bill would require THC to prepare a management plan for each historic site before initiating a transfer. TPWD would continue to operate and maintain the site until the transfer took place. Employees with more than 50 percent historic site-related duties would be transferred to THC,

and no transferred employee could be dismissed without cause before the first anniversary of the transfer.

THC could establish fees at all historic sites under its jurisdiction and would allow it to enter into an agreement with a non-profit entity for the expansion, renovation, management, operation, or financial support of any site. This bill would allow THC to seek and accept grants and donations for historic sites. All funds collected from fees, grants, or donations would have to be credited to the Historic Site Account.

The bill would allow volunteers to help carry out the duties of THC, but would not allow volunteers to serve in an enforcement capacity.

TPWD would have to comply with the recommendations in the State Auditor's "An Audit Report on Financial Processes at the Parks and Wildlife Department Report No. 07-021," contingent on the agency receiving sufficient funding to implement the recommendations.

The bill would require TPWD to practice certain park management-related provisions, such as establish an annual:

- Equipment Review System
- Facility Reservation System Evaluation; and
- Maintenance Provider Review System

The Equipment Review System would entail annual assessments to determine the condition of and sell outdated maintenance equipment, if it had a fair market value less than the annual cost of maintaining the equipment, was not operational, or no longer served the purposes of the department. Proceeds from the sale of outdated equipment would be credited to the appropriate TPWD account.

The Maintenance Provider Review System would entail annual assessments to determine whether maintenance tasks could be done by a third-party contractor more cost-effectively and yield an equal or greater standard of quality.

TPWD would have to submit, by January 15 of each legislative session, a Management Plan and Priorities List to the governor, the speaker of the house of representatives, the lieutenant governor, and the chair of each

House and Senate standing committee with relevant jurisdiction. The Management Plan and Priorities List would have to include:

- a prioritized list of TPWD facilities in need of repair, renovation, expansion, or maintenance;
- an itemized list explaining additional funding requested to accomplish a project on the prioritized list; and
- the results of the annual Equipment Review, Maintenance Provider Review, and Facility Reservation System Evaluation.

The bill would exempt TPWD from Government Code, sec. 651.004 with respect to employees in field-based operations. This bill would allow a TPWD employee working in the hospitality unit or an employee rendering a special customer service to an individual or group to accept gratuities.

TPWD could use the labor of an inmate confined in a state, county, or local correctional facility for wildlife management areas and other property under TPWD jurisdiction. TPWD could purchase equipment, meals, supplies, and materials necessary to facilitate inmate labor, but all inmates working on behalf of TPWD would remain under the jurisdiction of the correctional facility.

TPWD would be allowed to sell livestock on any state park, if it were in excess of natural resource management, educational, or interpretive objectives.

TPWD could establish seasonally variable facility and lodging fees to recover direct and indirect costs and provide a reasonable rate of return.

TPWD could:

- promote visits and enhance revenues;
- establish and operate staff concessions on park sites;
- purchase products for profitable resale or rental; and
- enter into leased concession contracts as necessary.

The bill would require TPWD to set, enforce, and amend speed limits on its properties in collaboration with the Texas Department of Transportation (TxDOT). The speed limits specified would be:

- 30 mph on a park road or main drive;
- 20 mph on a secondary road; or
- as posted by TPWD.

TPWD would be required to establish criteria for determining the eligibility of land that was donated for inclusion in the state parks system.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

**SUPPORTERS
SAY:**

CSHB 12 would protect and honor the state's most valuable historic sites. TPWD handles many different tasks, including the management of statewide recreation, hunting, fishing, coastal preservation, natural resource preservation, and historic site maintenance. TPWD has done an admirable job with historic sites in the past, but the Texas Historical Commission is the logical agency to manage the state's historic sites because its mission is to protect the state's architectural, archeological, and cultural landmarks. While TPWD has not been able to prioritize the maintenance and promotion of historic sites during recent budget cuts, THC can be counted on to steward these sites as valuable cultural resources.

The bill would further develop Texas historic sites as optimum cultural and tourist attractions. Heritage tourism currently is the third-largest segment of the travel industry, behind only outdoor recreation and shopping. In recent years, the marketing of historic sites has changed from a focus on the preservation and promotion of single sites to a decentralized historic program that provides a more complete picture of an entire region. By transferring historic sites to the Historical Commission, this bill will enable the agency to develop a distinct franchise for Texas Heritage Tourism. As an example, THC has created programs like the Texas Heritage Trail program, which have resulted in coordinated site management and generated additional tourist travel to destinations across the state.

THC has a proven track record for assuring better visibility and user experiences that have created financial benefits, especially in rural Texas, where park fees, lodging, food, and related travel expenses contribute greatly to the local tax base. The bill would ensure that THC was able to

provide improved historic site services through its six-region commission by creating the Historic Sites Fund, requiring THC to develop a management plan before transferring a site, and dedicating additional revenue to benefit historic sites. While the entire amount might not be allocated each legislative session, dedicating this funding to historic sites would ensure that funding was not lost to other state park priorities in lean fiscal years.

THC is the best steward of state historic sites and has experience in revitalizing them and making them more profitable. One example of their success includes the Texas Main Street Program, which helps revitalize historic downtown and neighborhood commercial districts by using preservation and economic development strategies. To date, the Main Street Program has resulted in the private reinvestment of more than \$860 million in Texas downtowns and commercial districts, created more than 18,200 jobs, and established more than 4,600 new businesses. While every historic site would not generate a profit, by hosting many historic sites across the state, THC should be able to develop economies of scale that benefit the entire system of sites. The House-engrossed version of HB 1 by Chisum and this bill would not reduce the FTEs for either TPWD or THC.

THC intends to work with local non-profits, existing staff, volunteers, and other entities to preserve institutional knowledge and avoid disruptions of operations during the site transfers. The bill would allow the Historical Commission to take advantage of innovative non-profit relationships like the Nimitz Foundation to operate historic sites but would not allow THC to cede the stewardship of these sites to other entities. Further, this bill would allow THC to work in tandem with TPWD to ensure that recreational activities currently provided remained available to visitors.

CSHB 12 also would provide much-needed support to TPWD. While the sporting good sales tax currently brings in about \$105 million a year, recent allocations have been only \$15.5 million for state parks and \$5 million for local parks. The bill would dedicate 94 percent of the sporting goods sales tax collection to the agency, which would be a significant increase above the current statutory cap of \$32 million annually. The bill would take into consideration several of the issues raised in the state auditor's report and would encourage TPWD to engage in marketing efforts, improve park revenue opportunities, and prioritize maintenance projects for facilities and equipment. Also, the bill would enable TPWD

to outsource some tasks to third-party contractors to reduce costs and encourage the agency to consider its facilities reservation process and variable fee structure to support more visitor traffic. By instituting these best practices procedures, CSHB 12 would ensure greater efficiency and improve the profit potential at TPWD sites.

OPPONENTS
SAY:

This bill would mandate unnecessarily the transfer of historic sites from TPWD to the Texas Historical Commission. Government Code, sec. 442.019 already allows these transfers by interagency agreements that would ensure both agencies developed a public plan of action. At this time, there has been no public input, study, or evaluation to suggest a cost savings or operational benefit would result from transferring 18 historic sites to THC. A recent Sunset Commission review did not make such a recommendation, nor has there been a feasibility study on transferring these 1,604 acres, which include 100 archaeological sites. The Legislative Budget Board found that it costs the TPWD \$5 million to operate these 18 sites annually, while THC is estimating an annual cost of \$7 million and a one-time repair and restoration budget of \$34 million.

Without a concrete implementation plan that would include a transfer timeline and cost estimate, it is unclear if THC would be prepared to develop, restore, market, and operate each of these sites. This transfer also would result in a significant duplication of efforts, with both TPWD and THC engaging in recreational activities, archeological programs, and natural resource management. Further, without undergoing a public hearing process, it is unclear if the transfer of these sites would have the buy-in needed at the local level to support these cultural resources. Instead, the bill should create a joint interim committee to study the potential cost, plan, and impact before transferring state historic sites and to develop a consensus-based course of action.

This bill would transfer historic sites to an agency with no experience in facility operations and management. While THC points to the success of the Courthouse Restoration program, the Main Street program, and the Heritage Trail program, none of these programs included site operation and management. Rather, all of these programs were marketing and grant-making projects of THC that depended on the operation and management of sites by local jurisdictions. The bill would look to the Nimitz Museum as a model, but that site currently is managed by a non-profit organization. Many of the historic sites being proposed for transfer do not have robust non-profit organizations that could provide ample operation and

management support.

It is unclear if THC would be able fully to develop a site operation and management procedure for 18 sites, while it simultaneously built a statewide marketing campaign and engaged in archeological, recreational, and historic preservation activities. While this bill would require THC to submit a management plan, it would not require the plan to be reviewed or approved. While THC might have expertise in historic preservation, it does not have the expertise to support the recreation and natural resource preservation activities on these sites. THC should stick to the marketing efforts at which it excels and support TPWD's efforts to be a good steward of these resources.

This bill would not guarantee additional funding for TPWD. The TPWD biennial budget is roughly \$500 million for fiscal 2008-09, and while this bill would guarantee that 94 percent of the sporting goods sales tax (roughly \$215.5 million in FY 2008-09) was allocated to support state parks, local parks, and wildlife conservation accounts, there is no guarantee that it would increase overall operational funding at TPWD. During the appropriations process, additional revenues from the sporting goods sales tax could be offset by a decrease in general revenue allocations.

Funding has been the main reason that state historic sites have degraded, not a lack of institutional will at TPWD. Also, this bill would dedicate roughly \$13 million to the Historic Site Account but would not share this funding with TPWD, which has significant historic resources to manage, such as the Battleship Texas and the Texas State Railroad. Further, this bill would transfer only \$5 million in sites from TPWD yet provide THC with more than \$13 million in additional funding. If THC is going to receive all the funding for historic sites, then it should also be responsible for managing all the state's historic resources. While THC stands to benefit in the short run, it too could see its general revenue appropriations shrink in lean years. To that end, there is no guarantee that THC would be better equipped to handle the state's historic sites than TPWD.

**OTHER
OPPONENTS
SAY:**

This bill should require the Sunset Commission to perform a follow-up review of the historic sites that are transferred because THC is not scheduled for its next review until 2018.

NOTES:

HB 6 by Hilderbran would dedicate all sporting goods sales tax revenues to the credit of TPWD under Tax Code, sec. 151.801. It would dedicate

the same percentage of proceeds received under Tax Code, sec. 151.801 to state parks, local parks, and wildlife conservation accounts but would not require any historic site transfers or dedicate 6 percent of proceeds to historic sites. CSHB 6 was reported favorably by the House Culture, Recreation, and Tourism Committee on March 14.

HB 7 by Hilderbran would dedicate 6 percent of the sporting goods sales tax revenue to the credit of the Historic Site Account and 94 percent of the sporting goods sales tax revenue to the credit of TPWD, under Tax Code, sec. 151.801. The bill would also transfer 18 historic sites from TPWD to THC, but would not require the management improvements for TPWD. It was reported favorably by the House Culture, Recreation, and Tourism Committee on April 3.

The fiscal note indicates that CSHB 12 would cost \$165 million in general revenue in fiscal 2008-09. TPWD is expected to spend \$2.5 million with 57 FTEs to operate the 18 historic sites in fiscal 2007. THC has indicated that it would need \$7 million with 100 FTEs to operate the 18 historic sites plus \$34 million in one-time costs to handle repairs and restoration of the sites associated with the transfer.