

SUBJECT: Continuing Texas Historical Commission, sunset of Antiquities Committee

COMMITTEE: State, Federal and International Relations — committee substitute recommended

VOTE: 7 ayes — B. Hunter, Dukes, Eiland, Elkins, Reyna, Rhodes, Rusling
0 nays
2 absent — Price, Serna

SENATE VOTE: On final passage, March 21 — 30-0

WITNESSES: For — Jill Souter, Preservation Texas; David A. Williams, Texas African American Heritage Organization
Against — Lila Knight, Hays County Historical Commission
On — Robert D. Kiker, Permian Basin Petroleum Association

BACKGROUND: In 1953 the Legislature created the Texas State Historical Survey Committee to oversee most of the state’s historic preservation programs and to coordinate local preservation volunteers. The Legislature reorganized the committee in 1973 and renamed it the Texas Historical Commission (THC). The THC is statutorily charged with leading and coordinating historic preservation efforts in the state, supplying information to the public, providing technical assistance for preservation and restoration activities and administering state and federal laws and programs. The THC is composed of 18 citizen members appointed to staggered six-year terms by the governor with the advice and consent of the Senate.

In 1969 the Legislature adopted the Texas Antiquities Code and created the Texas Antiquities Committee in response to public controversy over treasure hunting in Texas coastal waters. The committee is charged with designating state archeological landmarks and issuing permits for their excavation. The committee also oversees research and salvage of state archeological landmarks and treasures as well as disposition of objects and artifacts recovered by salvage and research operations. The Antiquities

Committee is a nine-member board consisting of six ex-officio members and three citizen members to appointed to two-year terms by the governor with advice and consent of the Senate. One designated ex-officio member is the THC chair.

The THC and Antiquities Committee function as one agency. They have the same executive director, share staff resources and receive funding through a single budget appropriation to THC. THC was appropriated \$3,693,651 for fiscal year 1994 with authority for 74 employees.

The Texas Preservation Trust Fund Account receives both private donations for historical preservation and archeological investigation and general revenue appropriations for the Historic Preservation Grant Program. The fund had a balance of about \$72,700 in April 1995. In 1993 the fund was made a special account in the general revenue fund, and under funds consolidation it is scheduled to lose its separate status on August 31, 1995.

The THC and the Antiquities Committee are subject to the Sunset Act and underwent the Sunset Advisory Commission review during the past interim. The THC and the Antiquities Committee will be abolished September 1, 1995 unless continued by the Legislature.

DIGEST:

CSSB 365 would continue the THC until September 1, 2007, and would abolish the Antiquities Committee. THC would assume powers and duties of the Antiquities Committee and would administer the Antiquities Code. CSSB 365 would require that the THC provide leadership and coordinate services in the field of archeological and historic preservation and strive to establish an effective working relationship among individuals primarily interested in history, architecture and archeology.

Archeological structures. CSSB 365 would require the commission to furnish professional consultant services for the preservation and restoration of archeological structures as well as historical structures, sites or landmarks already provided for by statute. CSSB 365 also directs the commission to use its facilities and leadership to stimulate the development and protection of not only historical resources but also archeological resources. THC could also establish an advisory committees to advise the

commission on archeological and historical matters including an advisory committee to consider matters relating to the Antiquities Code.

Commission composition. The THC would be composed of 18 members appointed by the governor with the advice and consent of the Senate. One member would have to be a professional archeologist, one a professional historian and one a licensed architect with expertise in historic preservation and architectural history. The other 15 members would represent the general public. Public members and their spouses could not conduct business with the agency or otherwise have financial ties to businesses that receive funds, other than grant monies, from the commission. CSSB 365 would require that members have a demonstrated interest in the preservation of the state's historical or archeological heritage. Two members would have to be residents of counties with populations of less than 50,000.

Project site notice requirements. Before breaking ground at a project site located on state or local public land, the person primarily responsible for the project would be required to notify the THC. The THC would be required to promptly determine whether a historically significant archeological site was likely present on the site, whether additional action would be needed to protect the site and whether an archeological survey was necessary.

THC would be required to make this determination not later than the 30th day after the date the commission received notice about the project. If THC failed to respond within the 30-day period, the person could proceed with the project without further notice to the committee. If, however, the THC determined that an archeological survey was necessary at the project location, the project would be deferred until the archeological survey was completed. THC would be required to make a determination by the 15th day for project locations regarding oil, gas or other mineral exploration, production, processing, marketing, refining or transportation facility or pipeline project.

A project by a county or municipality would require advance project review only if the project affected a cumulative area larger than five acres or disturbed a cumulative area of more than 5,000 cubic yards, whichever

measure was triggered first, or if the project was inside a designated historic district or recorded archeological site.

During the course of a project if a person encountered an archeological site, the person would be required to cease activity at the project location and notify THC, even though the person may have complied with previous notice requirements regarding the particular project. THC would be required within two business days to determine if the site was a historically significant archeological site, if additional action was needed and whether an archeological investigation was necessary. If the commission failed to respond within two days, the project could go forward without further notice requirements. CSSB 365 allows for several categorical exclusions and threshold exemptions to these notice requirements.

State registry of historic places. The THC would be required to develop and maintain a state registry of historic places using existing statutory classifications.

Texas Preservation Trust Fund Account. The Texas preservation trust fund would be established as a separate account in the general revenue fund. CSSB 365 would also specify that Government Code provisions governing consolidation of funds, abolishment of dedicated funds by the state comptroller and use of dedicated revenues would not apply to the account.

Property tax exemptions. The bill would add privately owned archaeological sites to the existing authority for local taxing units to grant property tax exemptions if they have been voluntarily designated as state archeological landmarks.

Use of historic structures. The bill requires historic structures to have been designated as such by state, federal or local agencies before they can be given priority consideration by the General Services Commission for use by the state.

CSSB 365 would delete requirements that the General Services Commission request from THC a list of suitable historic buildings available for purchase before constructing a new building for state use and delete a

requirement that the state agency for which new construction is approved report to the GSC information regarding their rejection of a site listed by the THC.

If a state agency rejected the acquisition of a historic structure because of the cost associated with the structure, the agency would be required to forward to the THC, for inclusion in the project analysis for the new construction or acquisition, a comparison of the cost of the new construction or acquisition with the cost of the purchase and rehabilitation of the historic structure.

The bill would also include standard sunset provisions on gubernatorial designation of the commission chair, conflict of interest, equal employment opportunity, preparation of finance reports and development of an accessibility plan.

**SUPPORTERS
SAY:**

Two separate policymaking bodies — THC and the Antiquities Committee — are no longer needed to protect the state's historic and archeological resources. Combining the Antiquities Committee and THC makes sense and would provide a single point of review for construction projects that may impact historical or archeological sites. The two entities already share staffs and act as one agency. Several other states have already combined oversight of their archeological permitting processes and historic preservation functions within one policymaking board.

Requiring appointment of an archeologist, architect and historian to the THC would ensure that the commission has adequate resources and expertise for caring out duties assumed from the Antiquities Committee. In addition, authorizing the commission to establish an uncompensated advisory committee on archeological matters would give THC significant expertise in archeological issues. The appointment of members from rural counties would ensure that the commission considers the issues facing less-populated areas of the state.

The Antiquities Code does not explicitly require projects that are likely to have an impact on an archeological site to notify the agency during the planning stages in order to determine whether construction activities might damage significant sites. The notice requirements in CSSB 365 would

reduce unintentional violations of the Antiquities Code and help ensure that significant archeological sites are identified and preserved or recorded before a site is destroyed.

Certain activities conducted on nonfederal public land have little, if any, chance to damage archeological sites, and should be exempted from the notice requirements.

It would be an important step to require THC to develop a state registry listing all the sites that the commission has officially designated as historic or archeological landmarks. Both offer several different types of designations that carry different levels of protection, yet there is no central database providing this information. In addition, developing a state registry would streamline and simplify the application process, minimize staff efforts and result in a more effective system.

The local property tax exemptions would be voluntary on the part of local taxing units and if adopted, would provide equally for both historical and archeological sites. Currently, only historical sites enjoy the opportunity to obtain local property tax exemption status.

The Legislature's original intent for the preservation trust fund was for it to retain the interest earned on its principal. But as of August 31, 1995, the fund will no longer be maintained as a separate fund in the general revenue fund. Merging the trust fund principal and interest with general revenue could discourage private donations. The preservation trust fund should remain a separate account within the general revenue fund for budget certification purposes while retaining its separate status and earned interest. The Legislature has allowed this in such accounts as the State Parks Fund and the Texas Recreational and Parks Fund.

**OPPONENTS
SAY:**

The provision that would exempt counties or municipalities from advance notice if a project affects a cumulative area of less than five acres or disturbs a cumulative area of less than 5,000 cubic yards is too broad. The vast areas excluded could contain valuable archeological artifacts that could be of significant interest to archaeologists, historians and the citizens of Texas.

Public land belongs to everyone and should be protected. Oil, gas and minerals concerns should not be treated to special notice requirements.

NOTES:

The committee substitute included a 15-day prior notice provision for oil and gas projects and a 30-day notice period for all other projects. The committee substitute clarified that a project conducted by a city or county would be exempted if it affected either five acres or 5,000 cubic yards or less.