

- SUBJECT:** Continuing the Texas Parks and Wildlife Department
- COMMITTEE:** State Recreational Resources — committee substitute recommended
- VOTE:** 7 ayes — Kuempel, Cook, Crownover, Ellis, Homer, E. Jones, Kolkhorst
0 nays
2 absent — Alexander, Callegari
- SENATE VOTE:** On final passage, April 17 — voice vote
- WITNESSES:** (*On House companion bill, HB 2244:*)
For — Janice Bezanson, Texas Committee on Natural Resources; Valarie Bristol, Trust for Public Land; Laura Dean-Mooney, Mothers Against Drunk Driving; Henry Dominguez and John Kaestner, Anheuser-Busch; Terry Farley; David Gochman, Texas Outdoor Recreation Alliance; Jim Haire, Texans Standing Tall; Myron Hess, National Wildlife Federation; Mary Hill; Wallace Klussmann, Texas Wildlife Association and Texas Farm Bureau; David K. Langford, Texas Wildlife Association; John Nau; Larry Pressler, Texas Recreation and Parks Society; *Registered but did not testify:* Snapper Carr, Texas Municipal League; Rod Ellis, City of Austin; Kelly Headrick, American Cancer Society; Cynthia Humphrey, Association of Substance Abuse Programs; Gary Joiner, Texas Farm Bureau; Andy Jones, Texans for State Parks; Jim Morrison, Artificial Reef Advisory Committee; John Posey, Mothers Against Drunk Driving; Brian Sybert, Sierra Club, Lone Star Chapter

Against — None

On — John Jefferson, The Wildlife Society, Texas Chapter; Kirk Moss; Andrew Sansom, Texas Parks and Wildlife Department; Ellen Ward; *Registered but did not testify:* Noe E. Perez
- BACKGROUND:** The Texas Parks and Wildlife Department (TPWD) resulted from a merger of the Game and Fish Commission and the State Parks Board in 1963. The department is charged with protecting and conserving Texas' fish and

wildlife resource, managing and operating the state park system, and educating the public on laws pertaining to fish and game, boating and firearm safety, and habitat and wildlife conservation.

TPWD was budgeted at \$256.3 million for this mission in fiscal 2000. Almost 70 percent of that budget was spent on operations (primarily state parks, law enforcement, and fish and wildlife management), 20 percent on capital projects, and the remainder on grants. Funds for these programs came from a variety of sources, including revenues from sales of hunting and fishing licenses; a dedication of parts of the sporting-goods sales tax and unclaimed refunds of motorboat fuel taxes; federal funds; bond proceeds; dedication of boat registration and sales taxes; undedicated general revenue; and revenues from park concessions and entrance fees.

TPWD has 26 regional offices and 174 local and field offices and manages 122 parks, natural areas, and historic sites, with about three-quarters of its 1,125 employees in the field. The agency is subject to the Texas Sunset Act and is scheduled to expire September 1, 2001, unless continued by the Legislature.

DIGEST: CSSB 305 would continue TPWD until September 1, 2013, and would make the following changes to the Parks and Wildlife Code.

The commission. The Texas Parks and Wildlife Commission or a committee thereof with at least five members would have to provide an opportunity for public testimony in an open meeting before making a major decision. The bill would define major decisions as those involving a vote on rules, contracts, proclamations, budgets, grants, development plans, or intergovernmental memoranda of understanding.

When making appointments to the commission, the governor would have to attempt to include people with expertise in fields such as historic preservation, conservation, and outdoor recreation.

Strategic planning. The bill would delete a general requirement that TPWD maintain a statewide plan for recreational resources and would add more detailed provisions to the Parks and Wildlife Code. It would direct TPWD to prepare an inventory of all government land — except that administered by

the General Land Office or School Land Board or owned by the Permanent University Fund — and all nonprofit-owned land with public access. TPWD would have to create and maintain a database of these resources and develop a conservation and recreation plan based on that inventory. Conservation would be defined to include natural, historical, recreational and wildlife conservation. The inventory and strategic plan would have to:

- ! identify threatened land and water resources;
- ! analyze existing and future conservation and recreation needs and determine criteria for meeting those needs; and
- ! assign conservation priorities to the resources.

Considering all resources in the inventory and the criteria in the strategic plan, TPWD would have to set priorities for its conservation and recreation activities, including resource acquisition and divestiture, grants to local parks, and cooperation with private conservation and landowners' groups, and would have to base decisions on those priorities. TPWD would have to amend its existing plans for parks and wildlife management areas to conform them to the goals and priorities of the strategic plan. TPWD would have to coordinate its activities, both internally and with other governmental or nonprofit entities, regarding recreation and conservation resources.

TPWD could acquire no new park, historical site, or wildlife site until it had completed the inventory and the commission had approved the strategic plan, unless:

- ! acquisition began before the effective date of the bill;
- ! the area was within or adjacent to land already held by TPWD; or
- ! the acquisition was of statewide significance.

The strategic plan would have to be completed by October 15, 2002, and the inventory and strategic plan would have to be updated at least every 10 years. Including a parcel of land in the TPWD land inventory database would not constitute a right of public access. TPWD would have to give any nonprofit partner a copy of its strategic plan.

TPWD would have to get the commission's approval for, and the commission would have to hold a public hearing on, all statutorily required development plans for any geographic area managed by the agency.

In relation to the statewide aquatic vegetation management plan required under Parks and Wildlife Code, chapter 11, TPWD would have to consult with, advise, and provide resources to assist local governments. Also, in setting priorities for providing technical guidance to landowners, TPWD would have to consider its inventory and strategic plan.

Nonprofit partners and fundraising. CSSB 305 would direct the commission to designate an official nonprofit partner for TPWD that was dedicated to the agency's goals. The commission would have to establish best practices of the official nonprofit partner and guidelines for its solicitation and acceptance of sponsorships. The official nonprofit partner could solicit and accept gifts, donations, and grants for TPWD. It also could organize and manage accounts for local nonprofits and other organizations established to benefit a specific state park. It could use state money for acquisitions and construction only if the project was consistent with the priorities set out in TPWD's strategic plan.

The official nonprofit partner would have to be audited annually by an independent auditor and would have to file the audit with the commission. Its transactions involving state money would be subject to audit by the state auditor.

The bill would modify the rules against state employees receiving gifts to allow a TPWD employee to accept reimbursement from the official nonprofit partner, provided that the expense was documented and was incurred in performing official duties regarding the official nonprofit.

TPWD could designate, subject to commission approval and rules regarding best practices, other nonprofit partners with which the agency could cooperate to help meet its goals. The best practices rules adopted by the commission for nonprofit partners would have to include compliance with state accounting standards and safeguards regarding any state assets the nonprofit partner held and compliance with the provisions of Government

Code, chapter 2256 regarding investment of public funds, insofar as the nonprofit partner controlled state money.

All nonprofit partners would have to be federally tax-exempt Texas-chartered corporations.

CSSB 305 would direct the commission to adopt, and the executive director to implement, rules governing fundraising for TPWD by agency employees. The rules would have to designate the categories of employees who could solicit donations, restrict the place and manner for fundraising, and establish reporting requirements regarding fundraising activities.

If TPWD granted money to a nonprofit partner, it would have to direct how the money was to be spent. A state employee could not spend or obligate a nonprofit partner's money directly. A nonprofit partner could not spend state money to lobby the Legislature or otherwise attempt to influence legislation. However, a nonprofit partner could provide money to TPWD for the agency to award an employee a salary supplement, bonus, award, or other benefit, including a scholarship.

TPWD could not accept gifts or donations from anyone holding a commercial license issued by the agency, except licenses to lease one's land for hunting.

Capital programs. TPWD would have to evaluate the cost of each construction project as it was completed, considering both direct and indirect costs, and would have to use those costs to determine whether it would be beneficial to use private-sector contractors to manage proposed construction projects or tasks. TPWD could use cost accounting procedures and instructions of the Council on Competitive Government, which would have to provide TPWD with any requested technical assistance.

Business plan. TPWD would have to develop an agency-wide business plan to guide its commercial projects. For all statewide (*i.e.*, not site-specific) commercial ventures, TPWD would have to develop project business plans that accounted for all project costs and would have to make reasonable income projections. TPWD would have to use the Council on Competitive Government where appropriate in creating these business plans.

All business plans would have to include:

- ! descriptions of the products or services to be offered;
- ! analyses of the information and personnel necessary to the project;
- ! financial data on past performance;
- ! a budget and goals for the future; and
- ! a list of resources needed for a successful project.

Taking into consideration the business plans of TPWD's individual ventures, the agency-wide plan would have to:

- ! evaluate projects' efficiency, seeking to increase savings and improve customer service;
- ! compare products and services to similar ones in the private sector;
- ! propose any changes to projects needed to meet TPWD's overall goals;
- ! assess the potential for using private contractors on projects; and
- ! coordinate existing projects to avoid duplication and to increase efficiency and effectiveness.

The TPWD executive director would have to review the plan of each venture yearly to assess its performance and value. For ventures that failed to meet their stated financial objectives, TPWD would have to modify the plan or terminate the venture, unless the project had a positive public relations or educational value.

TPWD would have to consider using private contractors, including nonprofit entities, to handle all or part of its statewide commercial projects.

Publications. CSSB 305 would restrict TPWD's ability to contract regarding a publication unless the agency retained the right to:

- ! terminate the contract if the publisher violated an agency rule regarding advertising that was appropriate for youth under age 17;
- ! finally approve the content and advertising in the publication;
- ! request and receive copies that contain only advertising that the agency by rule had determined was appropriate for youth under age 17.

If an existing contract did not meet these requirements, TPWD would have to negotiate a modification to the contract or otherwise modify the contract to incorporate such provisions by March 1, 2002.

Outreach and education. TPWD's education and outreach programs would have to be consistent with the agency's goals and mission, nonduplicative of other efforts, cost-effective, and structured in such a way that those criteria were measurable. The agency would have to evaluate programs according to whether they met those criteria and would have to report the findings to the commission and to the House Appropriations, Senate Finance, House State Recreational Resources, and Senate Natural Resources committees by September 1, 2002. Until that report was submitted, TPWD would have to limit spending on education and outreach to activities that it could prove were effective and required by statute.

Historical sites. CSSB 305 would direct TPWD to formulate a plan for preserving and developing all historical sites. Before formulating such a plan, TPWD would have to conduct an archeological survey of the site. It would have to consider that survey, the resources necessary to manage the site, and the comments of the Texas Historical Commission in formulating a plan to preserve and develop the site. TPWD also would have to prepare periodic reports regarding plans to preserve and develop historical sites.

TPWD and the historical commission would have to meet regularly regarding plans for historical sites and would have to form a joint panel to establish criteria for determining whether a site had statewide significance.

The bill would specify that only historical sites acquired by TPWD, not all such sites, are under TPWD's control. It would direct TPWD not to classify or refer to historical sites as parks.

Oyster bed leases. CSSB 305 would change certain rules related to leasing of oyster beds from the state. The number of acres that any one person could lease or control would increase from 100 to 300 acres, and someone who did not lease or control the 300-acre maximum could act for someone who leased or controlled the maximum. TPWD could not issue a certificate of location for more than 100 acres.

The lessee's rent would increase from \$3 to \$6 per acre. The bill would remove the exemption from rent for those who do not sell oysters from the leased area for five years after establishing the lease. The bill would impose a 10 percent penalty for late payment of rent. Failure to pay the rent for 90 days after the March 1 deadline would terminate the lease.

The bill would set the term of an oyster bed lease at 15 years and would direct the commission to set renewal procedures by rule. To renew, a lessee would have to pay a \$200 renewal fee. Unrenewed leases would be auctioned off. The commission would have to set rules regarding transfer of leases, including a \$200 fee to transfer a lease, unless the lease was transferred by inheritance. A transfer would not change the term of the lease.

Shrimping. TPWD would have to conduct a study on the shrimping industry, soliciting input from interested groups and the public and using research required under Parks and Wildlife Code, chapter 77. The study would have to analyze coastal shrimp populations, the size and projected growth of shrimp beds, the status of conservation measures, including regulations and license buybacks, and the status of shrimp habitat and marine resources that depend on shrimp. The report would be due to the commission, the presiding officers of each house of the Legislature, the Senate Natural Resources Committee, and the House State Recreational Resources Committee by September 1, 2002. The study could be updated periodically, and the commission would have to base policies and rules regarding shrimping on the latest study.

Miscellaneous. CSSB 305 would exempt TPWD from the duty to collect, analyze, and report data related to traffic and pedestrian stops and detentions by peace officers.

The bill would add standard sunset provisions relating to conflicts of interest, appointee qualifications and terms, grounds for removal of commission members, standards of conduct, training, separation of policy-making functions of the commission from the operational functions of the agency staff, handling of complaints, and gathering and reporting of equal employment opportunity data.

The bill would take effect September 1, 2001. It would not affect a current commissioner's ability to serve out his or her term and would apply only to commissioners appointed after the effective date.

**SUPPORTERS
SAY:**

CSSB 305 would continue and improve an agency that is necessary for the protection of Texas' natural, historic, recreation, and wildlife resources. TPWD enforces hunting and fishing regulations to protect fish and wildlife from extinction; maintains a system of parks and historical sites that enable Texans to engage in recreation, experience nature, and learn about their history; creates valuable tourism opportunities; helps landowners manage their land for wildlife; and stocks lakes, bays, and estuaries with fish, to name a few of the agency's many valuable services.

The bill would add requirements to ensure that the public has the opportunity to comment on the commission's proposed decisions. Currently, the commission often acts as a committee of the whole or as a committee that constitutes a quorum of the whole. Since committees can act without public hearings, the commission may make important decisions without public input. The bill would ensure that such practices do not deprive the public of the right to engage the commission on issues facing the agency.

CSSB 305 also would improve TPWD by providing a way to make official its informal relationship with the Texas Parks and Wildlife Foundation, thus bringing the relationship within both the sanction and the regulation of the law. This would help prevent the appearance of conflicts of interest and the circumvention of rules governing state agency activity, while allowing the foundation to take on tasks for the agency, such as commercial ventures. However, the bill would not constrain TPWD's ability to work with many nonprofit organizations, which is important in view of the association of "Friends" groups with many of parks and historical sites.

The bill would direct TPWD to adopt sound business practices, such as using business plans and outside contractors and requiring the agency to assess and streamline programs for outreach and education. These practices would help the agency operate more efficiently, thus helping to maximize the resources that the Legislature dedicates to TPWD's mission.

The bill also would improve TPWD by requiring it to gather the information and make the assessments needed for effective decision-making. Currently, TPWD does not have a clear idea of unmet recreational and conservation needs and thus of its priorities. The inventory and strategic plan required by CSSB 305 would eliminate these deficiencies, which stand in the way of TPWD setting clear goals and getting the most value for its dollar. Also, the bill's moratorium on most new acquisitions would balance the need for flexibility, in case a truly extraordinary opportunity arose, with the need to assess current holdings before taking on new ones.

CSSB 305 also would make needed changes to TPWD's practices regarding oyster bed leases. Many of these leases, including some executed 30 to 60 years ago, have few provisions that most people would consider standard in a lease, such as the lease term, the lessee's right to transfer or sell the lease, and the consequences of the late payment of rent. The bill would put such terms into statute to protect the state's interests. It also would double the current \$3 rental rate, which the state auditor has found to be severely below market. These provisions are only fair, since oyster farmers receive special privileges, such as the right to harvest oysters off their leases when public oyster beds are closed to fishing and the right to move oysters from public beds into their lease areas.

CSSB 305 properly would not ban advertising and sponsorships by alcohol and tobacco manufacturers. Because these are legal products, there is no reason to impose on TPWD the revenue loss of \$500,000 per year that would result from such a ban. Accepting advertising from these businesses is no more problematic than using taxes from the sale of alcohol and cigarettes to finance law enforcement efforts.

If the state begins to prohibit agencies from accepting advertising of products that are bad for people's health, it will start down a slippery slope. The state then would have to decide whether to ban fast-food advertising and sponsorships in state agency publications or at agency-sponsored events. It also might have to eliminate such advertising at publicly funded athletic facilities. The proper distinction is the current one — that between legal and illegal products.

OPPONENTS
SAY:

CSSB 305 lacks crucial provisions that would prohibit TPWD from accepting alcohol or tobacco advertising or sponsorships, which the Sunset Advisory Commission recommended and which the Senate engrossed version of this bill contained. Because many of TPWD's programs and publications target youth, it is counterproductive and wrong for the agency to allow its name and programs to be associated with products that are illegal for youth. Also, it is a conflict of interest for the agency that pays the salaries of peace officers charged with enforcing the laws regarding tobacco and alcohol consumption and with educating boaters and hunters about safe practices to accept advertising subsidies from alcohol and tobacco manufacturers, whose products contribute to crimes and unsafe practices.

The bill's mandates for inventory and strategic planning demonstrate a misguided focus on the part of the agency and the Legislature. The agency's focus needs to be on helping private landowners manage their land best, rather than on preparing to acquire more state-owned land. Also, the "moratorium" imposed on new land acquisitions would be ineffective because the exceptions would swallow the rule.

CSSB 305 would require TPWD to dishonor its agreements with publishers to whom it has assigned the right to produce agency publications. Though the bill would direct the agency "to negotiate a modification" to contracts that lack certain provisions, by adding the direction "or otherwise modify the contract," the bill also could be interpreted as a direction to the agency to breach the contract if renegotiation was not possible.

It is not even clear whether the agreement regarding publication of the *Outdoor Annual* that gave rise to this provision is a contract or whether it was a sale of the exclusive rights to publish the annual. If it was a sale, there is nothing to renegotiate, and it is not clear what purpose the bill's provisions would serve.

NOTES:

The committee substitute deleted provisions in the Senate engrossed version that would have prohibited TPWD from accepting advertising or sponsorships that promote the sale of tobacco or alcohol products. It added the provision that would exempt TPWD from peace officer reporting requirements. The substitute also added the provisions pertaining to oyster bed leases and added provisions that would:

- ! allow gifts to the agency from those who lease their land for hunting;
- ! exclude land administered by the General Land Office or School Land Board or owned by the Permanent University Fund from the inventory of government land; and
- ! specify that including land in the inventory would not provide a basis for increased public access.