

- SUBJECT:** Establishing odd number of members for even-numbered boards
- COMMITTEE:** State Affairs — committee substitute recommended
- VOTE:** 6 ayes — Marchant, Madden, B. Cook, J. Davis, Gattis, Villarreal
0 nays
3 absent — Elkins, Goodman, Lewis
- WITNESSES:** For — None
Against — Gloria Meraz, Texas Library Association
On — D.W. Patrick, Texas Board of Medical Examiners; (*Registered but did not testify:*) Eddie Miles, Texas Board of Medical Examiners; Dana Mohr, Texas Polygraph Examiners Board; David Montoya, Board of Tax Professional Examiners
- BACKGROUND:** Prior to 1999, the Texas Constitution, art. 16, sec. 30a allowed the Legislature to establish terms of up to six years for members of boards for educational, eleemosynary, or penal institutions, provided that one-third of the members were elected or appointed every two years. This provision sometimes was referred to as the “the rule of three” because it had been interpreted to mean that such boards had to be composed of a number of members divisible by three.

The 76th Legislature adopted and voters approved HJR 29 by Gallego, amending art. 16, sec. 30a of the Constitution to allow a state board to be composed of an odd number of three or more members who would serve six-year terms, with one-third, or as near to one-third as possible, being appointed or elected every two years. It created an exception for boards required by the Constitution (such as the Board of Pardons and Paroles), allowing these to be composed of any number of members divisible by three who serve six-year terms staggered so that one-third are elected or appointed every two years. A temporary provision in HJR 29 required the Legislature to reconstitute any

board that did not conform with the constitutional amendment by September 1, 2003.

DIGEST:

CSHB 2769 would bring the even-numbered governing boards of 48 state agencies into compliance with Texas Constitution, art. 16, sec. 30a, as amended in 1999 by either adding or reducing members to establish an odd number of members. It would establish mechanisms for determining which position of current members would be abolished at the end of their term for boards and commissions with reduced membership. The governor or other appointing authority would fill any positions added.

In order to re-stagger the terms on the boards and commissions with a revised number of members, the bill includes transitional provisions in Government Code, sec. 651.008 to require that six-year terms of members on even-numbered boards that were not constitutionally established be reduced to two years. If a member had served two or more years, but less than four years, of a term, the new term for the appointee to that position would expire in four years. If a member had served four or more years, but less than six years, of a term, the new term for the appointee to that position would expire in six years. Members whose terms otherwise would not have expired in two years would be considered holdover appointees and would serve until their successor, if any, qualified.

The bill also contains provisions governing inaccuracies and conflicts between statutes for laws enacted by the 78th Legislature.

CSHB 2768 also would add conflict of interest provisions to Section 1151.051 of the Occupations Code governing the Board of Tax Professional Examiners.

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, 2003.

**SUPPORTERS
SAY:**

HB 2769 meets the constitutional requirement that the Legislature set the number of members of state boards and commissions at an odd number no later than September 1, 2003. The requirement for odd-numbered boards and commissions was set in the Constitution to help prevent tie votes and give the

Legislature more flexibility to establish governing bodies with five or seven members rather than a multiple of three, such as three, six, or nine. There is no particular reason why the terms of an equal number of board members must expire at the same time, and HB 2769 would establish a mechanism for re-staggering the terms.

The bill also establishes transitional provisions for determining which incumbent members will serve in positions being abolished when their term expires and re-stagger the terms. Ultimately, the governor and other appointing authorities in making appointments to the board will decide which members, if any, will remain on a board with reduced membership.

**OPPONENTS
SAY:**

This bill would cause needless disruption to state boards and commissions during a time of fiscal difficulties and government reorganization. It would cause the terms of the board members of all even-numbered boards not established in the Constitution to expire in two years and in many cases require an experienced member to leave if the number of members were reduced. Members expecting to serve the remainder of four or six year terms would have their terms prematurely shortened, and someone else could be appointed in their place to the newly staggered term.

The bill's provisions governing conflict of interests for public members of the Board of Tax Professional Examiners do not relate to Texas Constitution, art. 16, sec. 30a. If the Legislature is going to consider other revisions that are not constitutionally required, it should also amend section 1703.051(a) of the Occupations Code governing the Polygraph Examiners Board (PEB). This statute requires one of the board members to be a polygraph examiner who is the supervisor of the Department of Public Safety's (DPS) polygraph section. However, DPS no longer has a polygraph section, so PEB cannot comply with its governing statute. The Legislature should take this opportunity to update PEB's statute to reflect DPS's current structure.

NOTES:

The committee substitute differs from the bill as introduced by adding the following boards to the bill: Advisory Board of Athletic Trainers, Council on Cardiovascular Disease and Stroke, Commodity Producers Boards, State Board for Educator Certification, Texas Guaranteed Student Loan Corporation, Department of Information Resources, Texas Council on Offenders with Mental Impairments, Texas Military Facilities Commission,

Board of Pardons and Paroles Policy Board, Private Sector Prison Industries Oversight Authority, Texas Commission on Private Security, Texas Racing Commission, Texas Real Estate Broker-Lawyer Committee, Texas-Israel Exchange Fund Board, and the Council on Workforce and Economic Development.

The substitute also would change provisions from the original for the following boards: Texas State Libraries and Archives Commission, Operation Game Thief Committee, Polygraph Examiners Board, Texas Higher Education Coordinating Board, Texas State Board of Medical Examiners, Texas Workers' Compensation Commission, and the Texas Youth Commission.

The companion bill, SB 287 by Ellis, passed the Senate on the Local and Uncontested calendar on April 16 and was referred to the House State Affairs Committee.