

SUBJECT: Continuing Texas Historical Commission and transfer of historic sites

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

VOTE: 5 ayes — Hilderbran, Kuempel, Homer, O’Day, Phillips
1 nay — D. Howard
1 absent — Dukes

SENATE VOTE: On final passage, May 3 — 31-0, on Local and Uncontested Calendar

WITNESSES: (*On House companion bill, HB 2461 by Hilderbran:*)
For — John Nau, Texas Historical Commission
Against — None
On — Chloe Lieberknecht, Sunset Advisory Commission; Evelyn L. Merz, Houston Group of Sierra Club; Larry Oaks, Texas Historical Commission; (*Registered, but did not testify:* Myron J. Hess, National Wildlife Foundation; and Ken Kramer, Lone Star Chapter of Sierra Club))

BACKGROUND: The Texas Historical Commission (THC) is the state agency for historic preservation. The Legislature originally created the Texas State Historical Survey Committee in 1953 to identify important historic sites across the state, later expanding its role to include protecting and preserving the state’s heritage. In 1969, the Legislature created the Texas Antiquities Committee to protect all cultural resources, historic and prehistoric, on public land in Texas. Today, these two missions are combined in the THC, which is to protect and preserve Texas’ unique historic resources. THC also acts as the State Historic Preservation Office for Texas, implementing federally mandated historic preservation programs.

To accomplish its mission, THC:

- identifies and designates historic resources in Texas;
- reviews proposed projects to help protect historic resources on public and private land;

- provides financial and educational assistance to communities and organizations for developing and preserving historic resources; and
- acts as a steward to preserve and interpret historic resources entrusted to the state's care.

THC is governed by 17 commissioners appointed by the governor to staggered six-year terms. The commission has an annual budget of about \$27 million, with a staff of 119 in fiscal 2006-07.

The commission underwent Sunset review in 1995 and was continued by the 74th Legislature. If not continued by the 80th Legislature, the commission will be abolished September 1, 2007.

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. 442.019 allows TPWD, by interagency agreement, to transfer historical sites to 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 nonprofit corporation for the expansion, renovation, management, operation, or financial support of the site.

DIGEST:

CSSB 900 would continue THC until September 1, 2019. The rules and policies required by the bill would have to be adopted by THC no later than February 1, 2008.

The bill would prohibit the executive director from serving as a voting member on the board of directors of an affiliated nonprofit organization whose purpose was to raise funds for or provide services or other benefits to the commission. The bill would require THC to establish guidelines for identifying and defining the administrative and financial support the commission can provide to affiliated nonprofits. The commission would be required to define and adopt rules governing the relationship between the commission and affiliated nonprofits, including rules that:

- defined the extent to which staff could participate in fundraising activities for associated nonprofits; and

- prohibit staff from engaging in direct solicitation of funds for associated nonprofits.

The bill would require THC to establish statewide themes for the historic marker program more closely aligned with the agency's goals. THC would have to limit the number of markers it awarded annually and establish guidelines for awarding markers to include the application, rankings, and priorities in line with the statewide themes developed by the commission.

The bill would add standard Sunset provisions for an update and modification of restrictions on becoming a member or employee of the commission and update provisions relating to conflicts of interest. The bill would require information to be maintained about complaints to the commission and would update the required training program for commissioners. The bill would require THC to use technology to increase public access. It also would require the development and use of negotiated rulemaking procedures and appropriate alternative dispute resolution procedures.

CSSB 900 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 establish an Historic Site Account that could be used to administer, operate, preserve, repair, expand, or maintain historic sites and would be 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.

THC could establish fees at all historic sites under its jurisdiction and could enter into an agreement with a nonprofit 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.

CSSB 900 would allow volunteers to help carry out the duties of THC but would not allow volunteers to serve in an enforcement capacity.

The bill would require 94 percent of sporting goods sales tax collections each biennium to be credited to TPWD and 6 percent to the THC, in conformity with Tax Code, sec. 151.801. The bill would allow the Legislature to adjust the percentages allocated to the THC and TPWD under Tax Code, sec. 151.801 in future appropriations to reflect the transfer of historic sites and the resulting savings or costs to each agency.

The bill would clarify that rules associated with TPWD historic sites would remain in effect when transferred to the THC. Bonds or other obligations issued for TPWD still would be honored when sites were transferred to the THC.

The bill would require THC to prepare a base operating plan for each historic site before initiating a transfer on or before January 1, 2008. The base operating plan for each site would be required to include:

- a mission statement outlining the goals for the site;
- an interpretive plan showing how the mission would be accomplished;
- an operational plan covering property and artifact transfer, staffing, off-site support, curation, public relations with friends groups, and emergency planning;
- a maintenance plan;
- a marketing plan;
- a business plan including revenue and visitation goals;
- a plan for compliance with the Antiquities Code and the National Historic Preservation Act; and
- fiscal plans and budgets for all these items.

CSSB 900 would establish an interim study committee to review the base operating plan. Members of the interim study committee would form a subcommittee of the House Committee on Culture, Recreation, and Tourism to be appointed by the chair by September 1, 2007, and would report back by September 1, 2008, after having obtained feedback and information from industry professionals.

TPWD would continue to operate and maintain sites 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.

This bill would make a one-time exemption for restrictions on the allocation of money in the State Parks Account, the Texas Parks and Wildlife Conservation and Capital Account, and the Texas Recreation and Parks Account to handle the one-time appropriation of encumbered funds associated with the repair, renovation, maintenance, and other one-time costs associated with the transfer of historic sites and state parks. The allocation of funds would be contingent on the enactment of the general appropriations act.

The bill would take effect September 1, 2007.

**SUPPORTERS
SAY:**

CSSB 900 appropriately would continue the Texas Historical Commission and transfer state historic sites from TPWD. It would align THC's practices with accepted standards for the relationship between state agencies and closely associated nonprofit entities. The bill would ensure that the THC defined the relationship between the agency and any

affiliated nonprofit organization in order to eliminate any appearance of improper conduct or conflicts of interest. This would be achieved by prohibiting the executive director's participation as a voting member of an affiliated nonprofit board, preventing staff from engaging in fundraising for affiliated nonprofits, and establishing to identify and define the type of administrative and financial support the agency should give to associated entities.

This bill would ensure the THC historical marker program developed in a more strategic way. Approaching the marker program more strategically would help link this tool to THC's broader goals, particularly in the areas of education and tourism. By limiting the total number of markers, and awarding them based on statewide themes and significance, THC would ensure that markers remained more of an honor than a commodity. In addition, the bill would allow THC to assess a fee for an historic marker application, thus providing a means of supporting the historic marker program.

CSSB 900 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 THC 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 further would 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 commission, the bill would 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 its 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 nonprofits, existing staff, volunteers, and other entities to preserve institutional knowledge and avoid disruptions of operations during the site transfers. The bill would allow the commission to take advantage of innovative nonprofit relationships such as the Nimitz Foundation to operate historic sites but would not allow THC to cede the stewardship of these sites to other entities. Further, the bill would allow THC to work in tandem with TPWD to ensure that currently provided recreational activities remained available to visitors.

CSSB 900 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.

OPPONENTS
SAY:

CSSB 900 should establish stronger boundaries to govern the extent of THC's cash, fundraising, and in-kind support of affiliated nonprofits. This bill should prohibit all THC staff from directly soliciting funds for associated nonprofit corporations, prohibit any THC staff member from acting as the primary staff person or spokesperson for associated nonprofit corporations, and prohibit THC from providing cash support or paying the expenses of associated nonprofit corporations.

The bill unnecessarily would mandate 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. The recent Sunset Advisory 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. While this bill would create a joint interim committee to study the plans associated with the transfer of the state historic sites, it would not do so pro-actively and therefore would miss the opportunity 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 nonprofit organization. Many of the historic sites being proposed for transfer do not have robust nonprofit 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 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.

CSSB 900 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 fiscal 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 also should 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:

CSSB 900 should require the Sunset Advisory Commission to perform a follow-up review of the historic sites that are transferred because THC is not scheduled for its next review until 2019, even though it would be acquiring a significant number of state historic sites over the next biennium.

NOTES:

The fiscal note indicates that CSSB 900 would cost \$165.2 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.

The House committee substitute differs from the Senate-passed version in that CSSB 900 would:

- alter the qualifications needed to be appointed to THC;
- change the requirements of the governor in making appointments to the commission;
- allow THC to collect fees;
- allow the use of volunteer services;
- specify a list of historic sites to be transferred to THC;
- set up the Historic Site Account;
- allow THC to seek and accept grants and donations for an historic site from any appropriate source.
- allow the Legislature to adjust the percentages allocated to the commission and TPWD under Tax Code, sec. 151.801(c);
- establish a new allocation of the sporting goods sales tax to TPWD and THC;
- describe the means for transferring obligations for historic sites between agencies;
- require THC to prepare a base operating plan for each historic site;
- creates an interim study committee;
- ensures that TPWD employees could retain their jobs under THC; and
- allow TPWD and THC to absorb one-time allocations due to site transfers.

The House companion, HB 2461 by Hilderbran, was reported favorably, without amendment, by the House Culture, Recreation, and Tourism

Committee on April 10 and sent to the Local and Consent Calendars Committee.

HB 12 by Hilderbran, et al., which includes the allocation of sporting goods sales tax revenue and the transfer of state historic sites between TPWD and THC, passed the House by 141-0 on May 3 and was reported favorably, as substituted, by the Senate Finance Committee on May 21. SB 1848 by Duncan, an omnibus bill dealing with fiscal matters, includes the text of HB 12 and is on today's Emergency Calendar.