

BILL ANALYSIS

Senate Research Center
77R1052 MXM-D

C.S.S.B. 305
By: Harris
Natural Resources
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Committee Report (Substituted)

DIGEST AND PURPOSE

Periodically, state agencies undergo a review by the Sunset Advisory Commission. During the interim of the 76th Legislature, the Texas Parks and Wildlife Department (TPWD) went through the Sunset process. C.S.S.B. 305 continues the TPWD for 12 years and makes the statutory changes recommended by the Sunset Commission.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Parks and Wildlife Commission in SECTION 13 (Section 11.0161, Parks and Wildlife Code), SECTION 14 (Section 11.0172, Parks and Wildlife Code), SECTION 16 (Section 11.0182, Parks and Wildlife Code), SECTION 22 (Section 11.0275, Parks and Wildlife Code) and SECTION 25 (Sections 11.202, 11.203, and 11.205, Parks and Wildlife Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 11.002, Parks and Wildlife Code, to require the Parks and Wildlife Commission (commission) to develop and implement policies that clearly separate the policymaking responsibilities of the commission and the management responsibilities of the director and the Parks and Wildlife Department (department) staff, rather than the respective responsibilities of the commission and the department staff.

SECTION 2. Amends Section 11.0111, Parks and Wildlife Code, to provide that unless continued in existence as provided by Chapter 325 (Texas Sunset Act), Government Code, the department is abolished September 1, 2013, rather than 2001.

SECTION 3. Amends Section 11.012, Parks and Wildlife Code, by adding Subsection (d), to require the governor, in making appointments under this section, to attempt to include persons with certain areas of expertise.

SECTION 4. Amends Section 11.0121, Parks and Wildlife Code, to prohibit a person from being a public member of the commission if the person or the person's spouse meets certain criteria. Deletes text regarding eligibility for appointment.

SECTION 5. Amends Section 11.0122, Parks and Wildlife Code, as follows:

Sec. 11.0122. CONFLICT OF INTEREST. Defines "Texas trade association." Prohibits a person from being a member of the commission or being a department employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Act of 1938 (29 U.S.C. Section 201 et seq.) and its subsequent amendments, if the person meets certain criteria. Deletes text regarding a commission member or an employee of the department.

SECTION 6. Amends Section 11.0123, Parks and Wildlife Code, as follows:

Sec. 11.0123. New heading: LOBBYIST PROHIBITION. Prohibits a person from being a member of the commission or acting as the general counsel to the commission or the department if the person is required to register as a lobbyist under Chapter 305 (Registration of Lobbyist), Government Code, because, rather than by virtue, of the person's activities for compensation on behalf of a profession related to the operation of the department. Makes conforming and nonsubstantive changes.

SECTION 7. Amends Section 11.0124, Parks and Wildlife Code, to require appointments to the commission to be made without regard to certain factors.

SECTION 8. Amends Section 11.0125, Parks and Wildlife Code, to provide that it is a ground for removal from the commission that a member, rather than if a member, meets certain conditions. Provides that the validity of an action of the commission is not affected by the fact that it is, rather than was, taken when a ground for removal of a commission member exists, rather than existed. Requires the director, if the director has knowledge that a potential ground for removal exists, to notify the presiding officer, rather than chairman, of the commission of the potential ground. Requires the potential officer to then notify the governor and the attorney general that a potential ground for removal exists. Requires the director, if the potential ground for removal involves the presiding officer, to notify the next highest ranking officer of the commission, who will then notify the governor and attorney general that a potential ground for removal exists.

SECTION 9. Amends Chapter 11B, Parks and Wildlife Code, by adding Section 11.0126, as follows:

Sec. 11.0126. TRAINING PROGRAM FOR COMMISSION MEMBERS. Prohibits a person who is appointed to and qualifies for office as a member of the commission from voting, deliberating, or being counted as a member in attendance at a meeting of the commission until the person completes a training program that complies with this section. Requires the training program to provide the person with certain information. Entitles a person appointed to the commission to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

SECTION 10. Amends Chapter 11B, Parks and Wildlife Code, by adding Section 11.0127, as follows:

Sec. 11.0127. TRAINING FOR EMPLOYEES ON STATE INCENTIVE PROGRAM. Requires the director or the director's designee to provide to agency employees information and training on the benefits and methods of participation in the state employee incentive program under Chapter 2108B (Procedures for Negotiated Rulemaking), Government Code.

SECTION 11. Amends Section 11.014, Parks and Wildlife Code, as follows:

Sec. 11.014. New heading: PRESIDING OFFICER. Requires the governor to designate a member of the commission as the presiding officer of the commission to serve in that capacity at the pleasure of the governor. Deletes text regarding a member appointed as chairman biennially for a term of two years. Deletes text requiring the commission to elect biennially a vice-chairman from among its members. Provides that a vacancy in the office of presiding officer is filled in the same manner as the original designation. Deletes text regarding filling a vacancy in the office of chairman or vice-chairman. Makes conforming changes.

SECTION 12. Amends Section 11.0151, Parks and Wildlife Code, to define "major decision." Requires the commission, or any committee of the commission with at least five commission members serving on the committee, to provide an opportunity for public testimony in an open meeting before making a major decision.

SECTION 13. Amends Section 11.0161, Parks and Wildlife Code, as follows:

Sec. 11.0161. New heading: NOTIFICATION OF COMMISSION ACTIVITIES; COMPLAINTS. Requires the department to maintain a file on each written complaint filed with the department that the department has the authority to resolve. Requires the file to include certain information. Requires the department to provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the department's policies and procedures relating to complaint investigation and resolution. Requires the department, at least quarterly until final disposition of the complaint, to notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation. Authorizes the commission to adopt rules to define the types of complaints to which this section applies.

SECTION 14. Amends Chapter 11B, Parks and Wildlife Code, by adding Section 11.0172, as follows:

Sec. 11.0172. LIMIT ON CONTRACTS FOR PUBLICATIONS. Defines "publication" and "youth." Prohibits the department from contracting with a person regarding a publication unless the contract provides the department the authority to: terminate the contract, retain final approval over the content of the publication, including advertising, and request and receive an appropriate number of copies of the publication that contain advertising that is appropriate for viewing by youth. Requires the commission to adopt rules regarding the types of advertising that are appropriate for viewing by youth.

SECTION 15. Amends Section 11.0181, Parks and Wildlife Code, by adding Subsection (c) to require the department to manage the outreach and education activities performed under this section to ensure that the activities fulfill certain criteria.

SECTION 16. Amends Chapter 11B, Parks and Wildlife Code, by adding Section 11.0182, as follows:

Sec. 1.0182. EMPLOYEE FUND-RAISING. Requires the commission by rule to adopt policies to govern fund-raising activities by department employees on behalf of the department. Requires the rules to set certain criteria. Requires the executive director of the Parks and Wildlife Department (director) to approve and manage fund-raising activities by department employees on behalf of the department in accordance with commission rules.

SECTION 17. Amends Section 11.021, Parks and Wildlife Code, to require the director or the director's designee to provide to commission members and the department employees, as often as necessary, information regarding the requirements for office or employment, rather than their qualifications, under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

SECTION 18. Amends Section 11.022, Parks and Wildlife Code, to require the director or the director's designee to prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions, rather than transactions, are made without regard to certain factors. Requires the policy statement to include certain information. Deletes text regarding the policy statement including a comprehensive analysis, procedures of determination, and reasonable methods. Requires the policy statement to meet certain conditions. Deletes text regarding the policy statement covering an annual period and being updated at least annually. Makes conforming changes.

SECTION 19. Amends Chapter 11B, Parks and Wildlife Code, by adding Section 11.0255, as follows:

Sec. 11.0255. EVALUATION OF CONSTRUCTION PROJECTS. Requires the department to calculate the costs of each department construction project as the project is completed. Requires the department, in calculating the costs, to utilize certain methods. Requires the State Council on Competitive Government, on request, to provide technical assistance to the department, including assistance with the application of the council's cost accounting procedures and instructions. Requires the department, using the costs calculated under this section for completed projects, to evaluate the costs and benefits of contracting with private entities or individuals to manage proposed construction-related tasks or projects.

SECTION 20. Amends Section 11.026, Parks and Wildlife Code, to authorize the department, with an exception, to accept gifts of property or money in support of any department purpose authorized in this code. Prohibits the department from accepting a gift or other donation from a person who holds a commercial license issued by the department.

SECTION 21. Amends Section 11.0261, Parks and Wildlife Code, as follows:

Sec. 11.0261. New heading: PROHIBITION AGAINST ACCEPTANCE OF GIFTS, GRATUITIES, AND OTHER THINGS OF VALUE; EXCEPTION. Authorizes a department employee to accept reimbursement for travel expenses from the official nonprofit partner designated by the commission under Section 11.025 if certain conditions are met. Makes a conforming change.

SECTION 22. Amends Chapter 11B, Parks and Wildlife Code, by adding Section 11.0275, as follows:

Sec. 11.0275. PROHIBITION ON ALCOHOL AND TOBACCO ADVERTISING AND PARTICIPATION. Defines "publication." Prohibits the department from accepting an advertisement that promotes the sale of tobacco or alcohol beverages in a publication sponsored or published by the department. Provides that a public service advertisement to educate the public regarding the risks associated with alcoholic beverages is not considered an advertisement that promotes the sale of alcoholic beverages under this section. Prohibits such an advertisement from containing a promotion focused on a product or using a brand identifier or alcohol product logo. Authorizes such an advertisement to use a corporate logo that does not use a brand identifier or alcohol product logo. Requires the commission to adopt rules regarding promotions, sponsorships, advertisements, and logos.

SECTION 23. Amends Chapter 11, Parks and Wildlife Code, by adding Subchapter H, as follows:

SUBCHAPTER H. LAND AND WATER RESOURCES CONSERVATION PLAN

Sec. 11.101. DEFINITION. Defines "conservation."

Sec. 11.102. PLAN APPROVAL; HEARING REQUIRED. Requires the department to obtain approval from the commission for each development plan required by statute for a geographical area managed by the department. Requires the commission to hold a hearing on approval of the plan.

Sec. 11.103. INVENTORY. Requires the department to inventory all land and water associated with certain resources that meet certain criteria. Requires the department to create a permanent database of the resources inventoried under this section and to update the database as necessary, at least once every 10 years, to reflect changes in the resources.

Sec. 11.104. LAND AND WATER RESOURCES CONSERVATION AND RECREATION PLAN. Requires the department, using the inventory prepared under Section 11.103, to perform certain procedures. Requires the department, based on the analysis, to

prepare a land and water resources conservation and recreation plan. Requires the plan to include criteria for determining how to meet the state's conservation and recreation needs. Requires the department to revise the plan as necessary to reflect changes in the inventory developed under Section 11.103. Requires the department to modify any existing plans regarding parks and wildlife management areas to make the existing plans consistent with the land and water conservation and recreation plan. Requires the department to base its decisions regarding the state's conservation needs on the criteria developed in the plan, including decisions relating to certain items.

Sec. 11.105. COORDINATION OF CONSERVATION AND RECREATION OPERATIONS. Requires the department to perform certain procedures.

SECTION 24. Amends Chapter 11, Parks and Wildlife Code, by adding Subchapter I, as follows:

SUBCHAPTER I. STATEWIDE COMMERCIAL PROJECTS

Sec. 11.151. DEFINITIONS. Defines "statewide commercial project."

Sec. 11.152. BUSINESS PLANS. Requires each business plan developed under this subchapter to include certain information.

Sec. 11.153. DEPARTMENT PLAN: OPERATIONAL STRATEGIES. Requires the department to develop an agency wide business plan to guide its overall operational strategies for statewide commercial projects. Requires the plan to meet certain criteria. Requires the department to use the services of the State Council on Competitive Government, where appropriate, in fulfilling the department's duties.

Sec. 11.154. INDIVIDUAL PROJECT PLANS. Requires the department to develop a business plan for each statewide commercial project. Requires the plan to contain certain information. Requires the director to review the plan for each project at least annually to assess the overall performance and value of the project. Authorizes the department to modify a plan as necessary to meet changing conditions.

Sec. 11.155. ADJUSTMENT OR TERMINATION OF PROJECT FOR FAILURE TO MEET FINANCIAL OBJECTIVES. Requires the department, except as provided by Subsection (b), to adjust or terminate a statewide commercial project that fails to meet the financial objectives stated in the project's plan. Provides that this section does not apply if the department determines that the project possesses a positive public relations value or fulfills a useful educational purpose.

Sec. 11.156. CONTRACT WITH PRIVATE SECTOR. Requires the department to consider contracting out a statewide commercial project to a private entity or individual, including a nonprofit entity or individual.

SECTION 25. Amends Chapter 11, Parks and Wildlife Code, by adding Subchapter J, as follows:

SUBCHAPTER J. NONPROFIT PARTNERSHIPS

Sec. 11.201. DEFINITIONS. Defines "nonprofit partner" and "official nonprofit partner."

Sec. 11.202. GENERAL DUTIES. Authorizes the department to select and cooperate with nonprofit partners to serve department goals. Requires the department to obtain commission approval for each nonprofit partner. Requires the commission by rule to establish best practices for nonprofit partners to comply with.

Sec. 11.203. ACCOUNTABILITY OF NONPROFIT PARTNERS; INVESTMENT RESTRICTIONS. Requires the commission by rule to require a nonprofit partner to comply with specified state standards and safeguards for accounting for state assets held by the nonprofit partner. Provides that Chapter 2256 (Public Funds Investment), Government Code, applies to a nonprofit partner to the extent that the partner controls state money.

Sec. 11.204. PLAN. Requires the department to provide to each nonprofit partner a copy of the plan developed under Section 11.104.

Sec. 11.205. OFFICIAL NONPROFIT PARTNER. Requires the commission to designate a single nonprofit partner as the official nonprofit partner of the department, unless the commission determines in writing that no nonprofit partner is capable of effectively implementing the goals of this section. Requires the official nonprofit partner to be dedicated to meeting department goals. Authorizes the official nonprofit partner to accept certain items to further department goals, including a donation made in the name of the department. Authorizes the official partner to use state money to acquire property or engage in construction activities only if that acquisition or construction is consistent with the department's conservation and recreation priorities outlined in the plan developed under Section 11.104. Authorizes the official nonprofit partner to organize and manage accounts for local nonprofit partners or other organizations to benefit specific state park or other sites under the department's jurisdiction. Requires the commission by rule to establish certain guidelines.

Sec. 11.206. AUDIT OF OFFICIAL NONPROFIT PARTNER. Requires the official nonprofit partner to be audited annually by an independent auditor. Requires the partner to file the audit with the commission. Provides that the official nonprofit partner's financial transactions involving and financial records relating to state money held by the foundation are subject to audit by the state auditor as provided in Section 321.013 (Powers and Duties of State Auditor), Government Code.

Sec. 11.207. EMPLOYEE BENEFITS. Authorizes a nonprofit partner to provide money to the department for the department to award, at the department's discretion, to a department employee as a salary supplement, bonus, award, or other benefit, including a scholarship.

Sec. 11.208. EXPENDITURES; LIMITS. Requires the department to direct, by the terms of the contract or grant, how a nonprofit partner is authorized to spend any state money it receives. Prohibits a state employee from directly spending or obligating a nonprofit partner's money. Prohibits a nonprofit partner from spending state money to receive certain influence.

SECTION 26. Amends Section 12.025, Parks and Wildlife Code, to require the department to consider certain matters in setting priorities for the provision of money to a landowner under this section.

SECTION 27. Amends Sections 13.001(a), (b), and (c), Parks and Wildlife Code, to provide that certain items are under the department's control and custody, except as otherwise provided by law. Requires the commission to establish a classification system for state parks and wildlife management area that categorizes wildlife management areas, parks, or a portion of parks as wildlife management areas, recreational areas, natural areas, or historical sites, rather than areas. Prohibits the commission from classifying a historical site as a historical park. Makes conforming and nonsubstantive changes.

SECTION 28. Amends Section 13.002, Parks and Wildlife Code, as follows:

Sec. 13.002. New heading: DEVELOPMENT AND ACQUISITION OF OUTDOOR AREAS. Deletes text regarding the department's authorization to prepare, maintain and revise a statewide comprehensive plan.

SECTION 29. Amends Section 13.005, Parks and Wildlife Code, as follows:

Sec. 13.005. New heading: ACQUISITION OF HISTORICAL SITES. Requires the department to formulate plans for the preservation and development of historical sites. Requires the department, before formulating a plan for a specific site, to conduct an archeological survey of the site. Requires the department, in formulating plans, to consider certain criteria. Requires the department and the Texas Historical Commission (THC) to form a joint panel to establish criteria for determining whether a site is of statewide significance and to promote the continuity of a historic sites program. Makes conforming changes.

SECTION 30. Amends Chapter 13A, Parks and Wildlife Code, by adding Sections 13.0051-13.0053, as follows:

Sec. 13.0051. COORDINATION WITH TEXAS HISTORICAL COMMISSION; REPORT ON PRESERVATION PLANS. Requires the department to meet regularly with the THC regarding plans to preserve and develop historical sites in this state.

Sec. 13.0052. REPORTS. Requires the department to periodically prepare reports on plans to preserve and develop historical sites in this state.

Sec. 13.0053. REFERENCE TO HISTORICAL SITES. Defines “publication” and prohibits the department from referring to a historical site as a “historical park” in a department publication or on a department sign or marker. Makes a conforming change.

SECTION 31. Amends Section 13.010, Parks and Wildlife Code, as follows:

Sec. 13.010. New heading: HISTORIC SITES. Authorizes the department to locate, designate, and suitably mark historic grounds, battlefields, and other historic spots in Texas as historic sites.

SECTION 32. Amends Chapter 77A, Parks and Wildlife Code, by adding Section 77.005, as follows:

Sec. 77.005. STUDY AND REPORT ON SHRIMP INDUSTRY AND RESOURCES. Requires the department, using the shrimp management plan required by Section 77.007 and the research conducted under Section 77.004, to comprehensively study shrimp resources, including the shrimp population, and the shrimp industry. Requires the study to analyze certain issues. Requires the department, in conducting the study, to solicit and consider input from certain entities. Requires the department to report on the status of the study to certain persons. Authorizes the department to repeat the study and report as necessary to adequately regulate the shrimp industry and to preserve shrimp resources. Requires the commission to base policies and rules relating to shrimping on the results of the most recent study completed under this section.

SECTION 33. Amends Section 11.001(4), Parks and Wildlife Code, to make a conforming change.

SECTION 34. Amends Section 11.0162, Parks and Wildlife Code, to make conforming changes.

SECTION 35. Amends Section 21.013(b), Parks and Wildlife Code, to make a conforming change.

SECTION 36. Amends Section 21.014, Parks and Wildlife Code, to make a conforming change.

SECTION 37. Amends Section 22.055(b), Parks and Wildlife Code, to make a conforming change.

SECTION 38. Amends Section 81.206(a), Parks and Wildlife Code, to make a conforming change.

SECTION 39. Requires the department to study all outreach and education activities performed under Section 11.0181, Parks and Wildlife Code, to determine whether the activities meet certain criteria. Requires the department, not later than September 1, 2002, to report to certain entities on the study's results. Requires the department, until the report is submitted, to limit spending on outreach and education activities performed under Section 11.0181, Parks and Wildlife Code, unless the department can prove to the commission that the spending is for an activity that is effective, or is required by statute.

SECTION 40. Prohibits the department from acquiring a new park, historical site, or wildlife site before the department has completed the inventory required by Section 11.103, Parks and Wildlife Code, as added by this Act, and the commission has approved the plan prepared by the department. Provides that this Section does not apply to acquisitions, as determined by the department, that meet certain criteria.

SECTION 41. Defines "publication" and "youth." Provides that to the extent a contract for a publication does not expressly allow the Parks and Wildlife Department to terminate the contract, retain final approval over the content, or request and receive copies, the department is required to negotiate a modification to or otherwise modify the contract to contain certain provisions not later than March 1, 2002.

SECTION 42. Requires the department, not later than September 1, 2002, to complete the initial report required under Section 77.005(c), Parks and Wildlife Code, as added by this Act.

SECTION 43. Requires the department, not later than October 15, 2002, to prepare the initial plan required under Section 11.104, Parks and Wildlife Code, as added by this Act.

SECTION 44. Makes application of this Act regarding commission members prospective.

SECTION 45. Effective date: September 1, 2001.

SUMMARY OF COMMITTEE CHANGES

Differs from the original as follows:

SECTION 3. Amends the previously proposed text regarding fields of expertise.

SECTION 4. Amends the previously proposed text to include a license issued under Chapter 43D.

SECTION 11. Amends the previously proposed amendments to delete text and requirements regarding the designation of an assistant presiding officer.

SECTION 14. Amends the previously proposed Section 11.0172 to include the definition of "youth," change the provisions regarding the publication contract, and add rulemaking authority.

SECTION 15. Adds provisions in SECTION 15.

Redesignates subsequent SECTIONS 15-38 as SECTIONS 16-39, with changes.

SECTION 20. Amends previously proposed SECTION 19 to clarify the text.

SECTION 21. Clarifies that the nonprofit partner is designated by the commission, rather than the department.

SECTION 22. Makes further provisions regarding a public service advertisement and grants the commission rulemaking authority regarding promotional and sponsorship opportunities at department

events.

SECTION 23. Modifies the heading of Subchapter H. Clarifies the text regarding land and water resources and a “land and water resource conservation and recreation plan,” rather than a “comprehensive statewide operational plan for conservation.” Includes recreation as a goal along with conservation.

SECTION 25. Modifies the definition of “nonprofit partner.” Adds the requirement that the department obtain commission approval for each nonprofit partner. Adds the exception regarding the commission’s determination that no nonprofit partner is capable of implementing the goals of the section.

SECTION 26. Eliminates the previously proposed amendments to Section 12.025(a), Parks and Wildlife Code. Modifies the previously proposed amendments to Subsection (b).

SECTION 39. Clarifies a compliance provision.

Deletes the text of previously proposed SECTION 39, regarding compliance with the provisions of this Act.

SECTION 40. Adds a provision regarding the commission’s approval of the plan.

SECTION 41. Adds provisions regarding definitions, transfers text from previously proposed SECTION 14 (Section 11.0172(c), Parks and Wildlife Code) and modifies provisions regarding a contract for publication.

Redesignates previously proposed SECTION 43 as SECTION 42 and SECTION 41 as SECTION 43, with changes.

SECTION 43. Changes the previously proposed deadline of February 2, 2002, to October 15, 2002.