

SUBJECT: Reorganizing the parole board and authorizing parole commissioners

COMMITTEE: Government Reform — committee substitute recommended

VOTE: 5 ayes — Swinford, Gallego, Callegari, Casteel, T. Smith

0 nays

2 absent — Allen, R. Cook

WITNESSES: None

BACKGROUND: Texas Constitution, Art. 4, sec. 11 requires the Legislature to establish a Board of Pardons and Paroles. Government Code, ch. 508 establishes an 18-member board appointed by the governor with advice and consent of the Senate. Members are full-time and salaried and serve six-year terms, with the governor designating the board chair as the presiding officer. A six-member committee of board members, designated by the governor, serves as a policy committee, whose duties include adopting the board's rules.

The board shares responsibility for the parole system with the parole division of the Texas Department of Criminal Justice (TDCJ). Often working in panels of three, the board determines which prisoners are released on parole and the conditions of parole and mandatory supervision. The board also makes decisions about revoking parole and mandatory supervision. TDCJ's parole division supervises parolees after they have been released.

DIGEST: CSHB 23 would reduce the number of members on the Board of Pardons and Paroles from 18 to seven, authorize the board to hire parole commissioners to work with board members to make decisions about parole, and eliminate the current board policy committee. The governor would continue to appoint the board's presiding officer, who would be the administrative head of the board and would hire and supervise parole commissioners, with the advice and consent of a majority of the board.

Parole commissioners, along with the seven board members, would determine which inmates were released on parole or mandatory supervision, the

conditions of parole and mandatory supervision, and the continuation, modification, and revocation of parole and mandatory supervision. Board members and parole commissioners would act in panels of three to make their decisions. Panels would have to include at least one board member and any combination of board members and commissioners. Parole commissioners could not vote or deliberate on a matter until they had completed at least one course of a required training program.

The presiding officer could delegate responsibilities and authority to other board members, parole commissioners, or board employees; appoint advisory committees of board members or commissioners; and establish administrative policies and procedures. The presiding officer would assume some of the policy board's current duties, including establishing caseloads and work hours for board members and parole commissioners, updating parole guidelines, reporting to the Legislature on the board's activities, and hiring board employees. The presiding officer also would review jointly with TDCJ all rules and policies relating to the parole process.

The parole board would take over some of the current duties of the policy board, including:

- adopting rules relating to the board's decision-making process;
- developing and implementing training programs for board members, parole commissioners, and employees and preparing a procedural manual and handbook;
- developing and implementing policies for when board members or parole commissioners should disqualify themselves from voting;
- preparing information of public interest and an annual financial report;
- complying with state and federal laws regarding program and facility accessibility and access for non-English speakers; and
- adopting rules relating to inmate eligibility for parole, the conduct of parole hearings, and conditions to be imposed on parolees.

Board members no longer would be exempt from removal from the board because of excused absences.

The board would be subject to the open meetings law and the Administrative Procedure Act, except that, as under current law, certain provisions would not

apply to the board's hearings or interviews relating to granting, rescinding, or revoking parole.

The governor would have to appoint new members to the board by January 1, 2004, and the terms of the board members serving on December 31, 2003, would expire with the appointment of the new members. At least three of the new board members could never have been employed by TDCJ and would have to have been serving on the board on May 1, 2003, been nominated to the board by that date, or been confirmed to a board position by the 78th Legislature.

Former employees of TDCJ could not serve on the board until at least two years after their employment with TDCJ had ended. At no time could more than three members of the board be former TDCJ employees. Previous service on the board would not be considered TDCJ employment. CSHB 23 would express the Legislature's intent that the first opportunities to be hired as parole commissioners be given to people who were serving on the board on May 1, 2003, or who had been nominated for board membership by that date or confirmed as a board member by the 78th Legislature.

The bill would take effect December 1, 2003.

**SUPPORTERS  
SAY:**

CSHB 23 is necessary to improve the operations of the Board of Pardons and Paroles, to strengthen the board's organizational structure and chain of command, and to give the governor both more responsibility and more accountability for the board. A smaller board would allow the governor's appointees to operate more efficiently and consistently, when appropriate.

The current 18-member board is too large to handle efficiently both its policy-making role and its day-to-day role in deciding whether to release inmates on parole. The board is larger than most governing boards, making it difficult to hold meetings, and often is unwieldy when making decisions about administrative matters. Also, it can be difficult to ensure that 18 gubernatorial appointees follow the board's procedures, rules, and policies with no clear chain of command among the board members or other clear authority over them. Although a policy board was created in 1997 to address these issues, it too has proved problematic. Also, it is unusual for appointed board members to receive salaries and to work like full-time state employees.

CSHB 23 would address these problems by reducing the board to a more manageable size so that it efficiently could make decisions relating to procedures and board policy. The bill would establish clearly the duties, responsibilities, and authorities of the board, the presiding officer, and the newly hired parole commissioners.

The bill would ensure proper handling of the board's workload by authorizing the hiring of parole commissioners who would work with the board members in making day-to-day parole decisions. Parole commissioners, common in other states, would be criminal justice professionals and would be trained in the parole decision-making process and on the use of parole guidelines.

Parole board members and parole commissioners would retain independence and discretion in making decisions about parole, and the bill would not disrupt board operations. The board has policies and rules in place, and the newly appointed board would have to include at least three people who were on the present board or had been nominated or confirmed to be on the board. Also, newly hired commissioners could include people now on the board. The bill would state the Legislature's intent that such people be given the first opportunities to be hired.

Because of constitutional requirements, board members — and not parole commissioners — would continue to make decisions about commutations and pardons. Because of other statutory provisions, board members would continue to make decisions about parole for offenders convicted of capital murder, certain sex offenses, and certain repeat offenders.

The bill would not specify the number of parole commissioners to be hired so that the number could be adjusted as necessary, depending on the workload. The Legislature would have adequate control of the number of commissioners through the appropriations process and regular committee oversight.

CSHB 23 would move current requirements that some actions of the board be subject to the open meetings law and Administrative Procedure Act to another section of the code because the bill would repeal the section where these requirements exist now. These provisions would not change current law or procedures, and certain hearings and interviews would remain exempt from these requirements.

CSHB 23 would not amend current law to require board members to meet as a body to consider clemency in capital murder cases. Courts have ruled that current board procedure is constitutional, and instituting such a requirement for capital cases could open the door to potential litigation against the board.

CSHB 23 addresses the structure of the parole board, not the governor's authority, so it would not be the proper vehicle to make an important change in state policy such as instituting new authority for the governor to commute death sentences to life in prison unilaterally, without a recommendation from the board. The current requirement provides a needed check and balance on the power of the board and the executive branch.

**OPPONENTS  
SAY:**

The Legislature established the board's current structure in 1989 to address difficulties with a smaller appointed board that worked in conjunction with hired parole commissioners. CSHB 23 would be an unwise move back to that problematic structure. The board should remain as independent as possible so that members have complete discretion to base their decisions only on the merits of the case and parole guidelines.

The current board allows gubernatorial appointees — instead of bureaucrats hired as parole commissioners — to be held accountable for the decisions they make concerning public safety. The parole board is a constitutionally mandated board, and its authority should not be diluted by having state employees perform the same job as appointed board members, who are subject to Senate confirmation.

CSHB 23 would not specify the number of commissioners that could be hired, leaving the potential for unlimited growth in this area of government or even leaving the system short-handed if fewer commissioners than necessary were hired.

**OTHER  
OPPONENTS  
SAY:**

To help prevent the execution of innocent inmates, hold board members more accountable for their decisions, and make certain decisions more transparent to the public, CSHB 23 should include a requirement that the board meet as a body to consider clemency in capital cases and that the decisions of individual board members be announced publicly.

To give the governor real authority and responsibility for the parole process, CSHB 23 should include authority for the governor to commute death sentences to life in prison.

**NOTES:**

The filed version of HB 23 would have required the Boards of Pardons and Paroles to meet as a body or by telephone conference call to make decisions on clemency requests in death penalty cases. The board would have had to deliberate privately, but board members would have had to announce publicly their individual decisions whether to recommend clemency and would have had to sign their name with their recommendation and reasons for their recommendations. It also would have required that proceedings, other than board deliberations, at telephone conference calls of the board be recorded and made available to the public.

The substance of CSHB 23 was included in HB 72 by Allen in the first called session, which was reported favorably by the House Government Reform Committee but died in the House Calendars Committee. Provisions in CSHB 23 that were not in the filed version of HB 23 or in HB 72 include:

- the requirement that panels include at least one board member
- the requirement that the presiding officer obtain the advice and consent of the board to hire and supervise parole commissioners and other personnel;
- the requirement that at least three new board members could never have been employed by TDCJ and would have to have been serving on the board on May 1, 2003, been nominated to the board by that date, or been confirmed to a board position by the 78th Legislature;
- the prohibition against former TDCJ employees serving on the board for two years after their employment with TDCJ and against more than three members of the board being former TDCJ employees; and
- the statement of intent that the first opportunities to be hired as parole commissioners be given to people who were serving on the board.

During the 78th Legislature's regular session, SB 1952 by Ellis and SB 1678 by Whitmire each would have restructured the Board of Pardons and Paroles in the same manner as CSHB 23. Both bills passed both houses but died in conference committee. Art. 6 of SB 22 by Ellis, an omnibus government reorganization bill that passed the Senate during the first called session, was

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substantially similar to HB 23. SB 22 died in the House Government Reform Committee.