

BILL ANALYSIS

Senate Research Center
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S.B. 685
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Board of Pardons and Paroles (board) is appointed to carry out the extraordinary duty of making recommendations to the governor on the use of his executive clemency power, including in capital cases. However, despite the gravity of this responsibility, the process of deciding on these recommendations lacks clarity and specificity in Texas law. For example, for a case in which a person on death row is petitioning for clemency, the board is not even required to hold a meeting to hear the petition. Without a clear set of procedures for clemency hearings, petitioners for clemency do not have the ability to effectively prepare their petition, and the transparency and efficacy of our criminal justice system is impaired.

S.B. 685 brings clarity to the clemency process by laying out specific procedures for the board to deliberate on capital cases. Under the bill, the board is required to convene a hearing to consider presentations on clemency matters, and must allow for the inmate requesting clemency, their attorney or representative, and representatives of the family of the victim to appear in the hearing. The bill also lays out the procedure for the board to deliberate and issue a decision after such a hearing. Finally, the bill updates the board's meeting requirements to allow them to meet via videoconference. By laying out a clear process for conducting clemency hearings, S.B. 685 brings transparency to the criminal justice system at a point where its decisions literally mean the difference between life and death.

As proposed, S.B. 685 amends current law relating to hearings by the Board of Pardons and Paroles regarding clemency matters.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Board of Pardons and Paroles in SECTION 4 (Article 48.011, Code of Criminal Procedure) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 508.047(b), Government Code, as follows:

(b) Creates exceptions, as provided by Article 48.011, Code of Criminal Procedure, and Section 551.124, Government Code, to the provision that members of the Texas Board of Pardons and Paroles (BPP) are not required to meet as a body to perform the members' duties in clemency matters. Makes a nonsubstantive change.

SECTION 2. Amends Section 551.080, Government Code, as follows:

Sec. 551.080. BOARD OF PARDONS AND PAROLES. Provides that Chapter 551 (Open Meetings) does not require BPP to conduct an open meeting for certain purposes, including to consider a clemency matter in a capital case under Article 48.011, Code of Criminal Procedure. Makes nonsubstantive changes.

SECTION 3. Amends Section 551.124, Government Code, as follows:

Sec. 551.124. BOARD OF PARDONS AND PAROLES. (a) Creates this subsection from existing text. Authorizes BPP to hold a hearing on clemency matters by videoconference call, as provided by Section 551.127 (Videoconference Call), or by telephone conference call, at the call of the presiding officer of BPP.

(b) Provides that Sections 551.127(b) (relating to requiring that the notice of a meeting of a governmental body held by videoconference call specify the location where a quorum of the governmental body will be physically present), (c) (relating to a meeting of a state governmental body held by videoconference call), and (e) (relating to the notice of a meeting held by videoconference call specifying the location of the meeting as the location where a quorum of the governmental body will be physically present) do not apply to a hearing by videoconference call held under this section.

(c) Provides that Section 551.127(a-3) (relating to disconnection of audio or video during a videoconference call) applies to a hearing by videoconference call held under this section, except that if audio or video communication with a member is lost or disconnected during the meeting, BPP is authorized to continue the meeting only if a quorum of BPP continues to participate in the meeting.

SECTION 4. Amends Chapter 48, Code of Criminal Procedure, by adding Article 48.011, as follows:

Art. 48.011. HEARING BY BOARD OF PARDONS AND PAROLES IN CAPITAL CASE. (a) Requires the members of BPP, in a capital case, to perform the members' duties in clemency matters by meeting in person or by participating in a telephone conference call, as provided by Section 551.124, Government Code, or a videoconference call, as provided by Section 551.127, Government Code.

(b) Authorizes the attorney or other person representing the inmate and any person representing the family of the victim to appear in person or be present on the telephone conference call or videoconference call, as applicable, to make a presentation on the clemency matter, regardless of whether BPP members meet in person or participate in a telephone conference call or videoconference call. Authorizes BPP to limit the number of persons who may make a presentation and to prohibit any person other than a BPP member from being heard. Provides that a hearing under this article is not subject to the requirement of Section 551.002 (Open Meetings Requirement), Government Code, that the hearing be open to the public.

(c) Requires that a hearing conducted in person be held at the correctional facility where the inmate is confined. Requires the inmate to be allowed to appear in person or be present on the telephone conference call or videoconference call, as applicable, unless there is an overriding security issue.

(d) Provides that BPP is authorized to deliberate privately after holding a hearing under this article, but at the conclusion of deliberations, the presiding officer is required to announce publicly each member's decision regarding whether to recommend clemency. Requires each member to sign the member's name with the member's written recommendation and reasons, if any, for the recommendation.

(e) Requires BPP to adopt rules as necessary to implement the requirements of this article.

SECTION 5. (a) Makes application of this Act prospective to June 1, 2022, as regards the filing of a clemency matter.

(b) Requires BPP to adopt the rules required by Article 48.011(e), Code of Criminal Procedure, as added by this Act, not later than June 1, 2022.

SECTION 6. Effective date: upon passage or September 1, 2021.