
**HOUSE COMMITTEE ON STATE CULTURAL & RECREATIONAL RESOURCES
TEXAS HOUSE OF REPRESENTATIVES
INTERIM REPORT 2004**

**A REPORT TO THE
HOUSE OF REPRESENTATIVES
79TH TEXAS LEGISLATURE**

**HARVEY HILDERBRAN
CHAIRMAN**

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Committee On
State Cultural & Recreational Resources

January 10, 2005

Harvey Hilderbran
Chairman

P.O. Box 2910
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The Honorable Tom Craddick
Speaker, Texas House of Representatives
Members of the Texas House of Representatives
Texas State Capitol, Rm. 2W.13
Austin, Texas 78701

Dear Mr. Speaker and Fellow Members:

The Committee on State Cultural & Recreational Resources of the Seventy-Eighth Legislature hereby submits its interim report including recommendations and drafted legislation for consideration by the Seventy-ninth Legislature.

Respectfully submitted,

Harvey Hilderbran

Charlie Geren Vice-Chairman

Edmund Kuempel

Dawna Dukes

Kevin Bailey

Larry Phillips

Byron Cook

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Vice-Chairman

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TABLE OF CONTENTS

INTRODUCTION 1
INTERIM STUDY CHARGES 2
CHARGE 1 3
CHARGE 2 11
CHARGE 3 13
CHARGE 4 17
CHARGE 5 19
Appendix 24

INTRODUCTION

At the beginning of the 78th Legislature, the Honorable Tom Craddick, Speaker of the Texas House of Representatives, appointed seven members to the House Committee on State Cultural and Recreational Resources. The committee membership includes the following: Harvey Hilderbran, Chairman; Charlie Geren, Vice Chairman; Dawwna Dukes; Edmund Kuempel; Kevin Bailey; Byron Cook; and Larry Phillips

During the interim, the committee was assigned six charges by the Speaker:

1. Actively study the rules, regulations and statutes which govern Texas Parks and Wildlife Department and the department's responsibilities.
2. Review, for the purpose of safety, the discharges of fire arms for hunting and recreational shooting in our state-owned river beds.
3. Review the missions and goals of the Texas Commission on the Arts, the Texas Historical Commission and the Texas State Library and Archives Commission and consider possible consolidation.
4. Research heritage, cultural, recreational and historical tourism programs the state is involved in and explore new ways to promote and improve tourism in the state.
5. Research the regulation and control of scenic by-ways and billboards.
6. Monitor the agencies and programs under the committee's jurisdiction.

The committee held five hearings in Austin and Houston on bay shrimping; funding issues for state parks; discharges of firearms for hunting and recreational shooting in our state-owned riverbeds; billboards; tourism; and the missions and goals of the Texas Commission on the Arts, the Texas Historical Commission and the Texas State Library and Archives Commission. This report reflects the committee's findings.

The committee wishes to express its appreciation to the agencies, associations and citizens that contributed their time and effort to this report.

HOUSE COMMITTEE ON STATE CULTURAL & RECREATIONAL RESOURCES

INTERIM STUDY CHARGES

1. Actively study the rules, regulations and statutes which govern Texas Parks and Wildlife Department and its responsibilities.
2. Review, for the purpose of safety, the discharge of firearms for hunting and recreational shooting in our state-owned river beds.
3. Review the missions and goals of the Texas Commission on the Arts, the Texas Historical Commission and the Texas State Library and Archives Commission, and consider possible consolidation.
4. Research heritage, cultural, recreational and historical tourism programs in which the state is involved and explore new ways to promote and improve tourism in the state.
5. Research the regulation and control of scenic by-ways and billboards.
6. Monitor the agencies and programs under the committee's jurisdiction.

CHARGE 1

Actively study the rules, regulations and statutes which govern the Texas Parks and Wildlife Department and the department's responsibilities.

These are the issues the committee uncovered while reviewing the responsibilities of the Texas Parks and Wildlife Department:

1. Bay Shrimping
2. Internet Hunting
3. Funding Issues for State Parks

Bay Shrimping

Commercial shrimping was a minor activity in Texas prior to 1920. In the following years, the shrimp fishery grew rapidly and subsequent management efforts evolved with the growth. Even in the early days of the fishery, there was concern about sustainability, particularly the harvest of small shrimp. The Texas Legislature, when enacting shrimping rules in the 1930's, established a 5½-in minimum size limit, a shrimping closure during May-July and a maximum trawl width of 10 feet. A major overhaul of shrimping rules occurred with The Shrimp Conservation Act of 1959 overhauled the existing shrimping rules in an effort to better allocate shrimp resources among the increasingly competitive gulf, bay and bait shrimpers.

Fishery Management Plan

The Texas Legislature kept the basic framework of the Shrimp Conservation Act of 1959 largely intact until they granted management authority to the TPWD in 1985. The new authority was contingent upon the development of a shrimp fishery management plan (FMP) which was adopted by the TPWD Commission (commission) in 1989. Based on continued over-fishing trends documented in the FMP, the commission adopted additional fishery restrictions in 1990 and 1994.

Limited Entry and Buy-back

Traditional management measures reduce the efficiency of individual shrimpers. More restrictive traditional measures can provide a biological benefit for shrimp stocks but may not maximize social and economic benefits due to the open-access nature of the fishery. To overcome this management handicap, the Texas Legislature in 1995 enacted the first bay and bait shrimp vessel license limited-entry program designed to reduce the documented fleet over-capitalization without severe disruptions to the fishing communities. This license buy-back program appears to have been successful in preventing further increases in in-shore shrimping effort. Although the fishing effort has been stabilized, it remains at historically high levels. Since the implementation of the buyback program, TPWD has purchased and retired 815 commercial shrimp boat licenses (422 bay and 393 bait) at a cost of approximately \$4.3 million. This represents 25% Of the original 3231 licenses grandfathered into the fishery in 1995, 25% have been bought-back by the state. The purchase price for licenses has increased from the initial rounds and leveled off in recently. The average price paid per license was \$3,394 in the first round of license buybacks (1996) and \$6,607 in the tenth round (2002.)

Beginning in 1998, the TPWD began a thorough review of all shrimping regulations to evaluate their biological, social and economic effectiveness. Based on the results of that study, the commission adopted additional conservation measures in 2000, as well as license fee increases for both commercial and recreational fishermen intended to speed up the license buy-back program. These most recent changes were a refinement of the shrimping regulations already in place. They were designed primarily to reduce growth and biological over-fishing as defined in the FMP, to increase the economic value of the industry by protecting juvenile shrimp and increasing the spawning of adult shrimp, and to reduce the incidental take of sea turtles and other aquatic life in shrimp trawls.

Recommendations

Creation of One Inshore Shrimp License The Legislature should consider the management and enforcement benefits of merging the current commercial bay shrimp license and the commercial bait shrimp license into one inshore shrimp license. This licensing distinction has become blurred through the years, as 85% of the individuals (vessels) now hold both bay and bait shrimp licenses. The demand for product should drive the supply into the market channel that is most valuable. Demand will fluctuate not only by season, but also within each week. The most profitable use of inshore product is the bait shrimp fishery; this fishery will certainly absorb the majority of the harvest.

Active vs. Inactive bay/bait licenses Some have raised concerns regarding the licensing of shrimpers and subsequent purchasing of inactive shrimping licenses by the state in the voluntary buy-back program. Currently, it is difficult to determine whether a vessel is active or inactive. These licenses are sold at the TPWD law enforcement offices and do require proof of a current (valid) Texas Boat Certificate of Title or a United States Coast Guard Documentation. The Legislature should consider whether limiting the buy-back program to active vessels could provide more effective resource conservation.

Internet Hunting

Internet technology has entered the world of shooting sports, and will soon to be available for the hunting of live, wild animals. John Lockwood, an entrepreneur from San Antonio, Texas, has developed a website, www.live-shot.com, that would enable people anywhere in the world to go online and shoot at live animals with a simple mouse-click. The website is currently configured for target shooting only; a camera mounted on top of a rifle allows a person to view a stationary target. An electromechanical interface controlled by the user's computer allows the user to remotely control the aiming and actuation of the firearm. Eventually, Lockwood envisions that paying customers will log on to hunt live, wild animals on his 300-plus acre property in Texas.

Lockwood contacted the Texas Parks and Wildlife Department's (TPWD) Law Enforcement Division in 2003 about the potential legal ramifications of his idea. After reviewing Lockwood's idea, TPWD informed him that under current law there were no restrictions that would apply to his prospective enterprise other than the requirement that a person, regardless of location, must possess a valid Texas hunting license while hunting a bird or animal located in Texas. In addition, hunter education requirements would be applicable. Lockwood indicated he only had plans to hunt exotic animals (e.g. Axis deer, Sika deer, and feral hogs) and because of state tagging requirements, was not interested in species legally designated as game animals. Lockwood's plans included having an on-site employee available to override the shooting system if necessary.

At the TPWD White-tailed Deer Advisory Committee meeting held at the Austin Headquarters on August 11, 2004, David Sinclair, Chief of Wildlife Enforcement, presented a segment on the use of the internet to hunt live animals. Under the impression that such activities were already taking place, the committee recommended that the department take immediate regulatory action to prohibit such practices. Subsequent investigations indicated that actual hunts had not been conducted, and that Underwood would not conduct hunts in 2004.

The TPWD staff briefed the Regulations Committee of the Texas Parks and Wildlife Commission on November 3, 2004. The committee at that time was advised that TPWD staff would request permission to publish regulation changes in the Texas Register. The intended changes would require any person hunting game animals or game birds in Texas to be physically present when the hunting takes place. The changes would also prohibit the use of remote-controlled weapons to take wildlife resources. TPWD Code, Chapter 61, §61.005, defines "wildlife resources" as all wild animals, wild birds, and aquatic animal life. Chapter 1, §1.101, defines "wild," when used in reference to an animal, to mean "a species, including each individual of a species, which normally lives in a state of nature and is not ordinarily domesticated." This definition does not include exotic livestock, which are defined by §161.001(a)(4) of the Agriculture Code.

It is the opinion of the TPWD general counsel and staff that the Parks and Wildlife Commission has the authority to regulate the means and methods for taking game birds, game animals, and fur-bearing animals in this state.

§61.054. Proclamations of the Commission:

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1. Regulation of the hunting, taking, or possession of game animals, game birds, or aquatic animal life under this chapter shall be by proclamation of the Commission.
 2. A proclamation of the Commission authorizing the hunting, taking, or possession of game animals, game birds, or aquatic animal life must specify:
 - a) the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed;
 - b) the means or method that may be used to hunt, take, or possess the game animals, game birds, or aquatic animal life; and
 - c) the region, county, area, body of water, or portion of a county where the game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

The regulatory authority for non-game wildlife, however, is limited. TPWD Code, §67.001 defines “non-game” as those species of vertebrate and invertebrate wildlife indigenous to Texas that are not classified as game animals, game birds, game fish, fur-bearing animals, endangered species, alligators, marine penaeid shrimp, or oysters. In §67.004(a), the authority of the commission to regulate the take of non-game wildlife is restricted to what “the department considers necessary to manage the species.” It can be argued, in a purely biological sense, that preventing someone from hunting by use of the Internet is not necessary to manage species of non-game wildlife.

Thus, the authority of the Parks and Wildlife Commission to regulate the hunting of non-game wildlife by use of the internet is tenuous, and it does not exist with respect to exotic species. However, the statute that is clearly applicable to all Internet hunting scenarios for any animal or bird is TPWD Code, Chapter 42, which states that no resident or non-resident may hunt any bird or animal in this state without having acquired a hunting license. The enforcement of the hunting license requirement is the main concern of TPWD. It would be virtually impossible to know whether or not a person who has registered to hunt via the internet is the same person who operates the computer to hunt online.

RECOMMENDATIONS

The legislature should consider passing legislation which states " any person engaged in hunting must be in the physical presence of the firearm being used to take the animal."

Funding for State Parks

Sporting Goods Sales Tax History

In the twenty years prior to 1993, the traditional source of revenue for the TPWD to provide for acquisition, development, and maintenance of state and local parks was a portion of the cigarette tax. This tax failed to generate the funds required to handle the public's needs. The portion of the cigarette tax (two-cents per pack) that was dedicated to TPWD proved to be a very unstable source of revenue; beginning in the late 1980's, revenue generated by the tax steadily declined.

YEAR	Fund 64 (State Parks)	Fund 467 (Local Parks)	TOTAL
1980	\$16,840,455	\$15,699,299	\$32,539,754
1981	\$17,724,123	\$17,724,123	\$35,448,246
1982	\$17,663,283	\$16,600,574	\$34,263,857
1983	\$18,380,046	\$19,075,937	\$37,455,982
1984	\$18,111,984	\$1,722	\$18,113,706
1985	\$18,232,751	\$9,125	\$18,241,876
1986	\$17,679,525	\$15,978,287	\$33,657,812
1987	\$16,706,553	\$8,706,553	\$25,413,106
1988	\$15,230,607	\$15,230,607	\$30,461,214
1989	\$15,168,774	\$15,168,624	\$30,337,398
1990	\$14,071,364	\$14,063,866	\$28,135,230
1991	\$13,561,946	\$13,561,946	\$27,123,892
1992	\$13,581,462	\$13,581,462	\$27,162,924
1993	\$13,369,904	\$13,369,904	\$26,739,808

The 73rd Legislature passed HB 706, which replaced the cigarette tax with the sporting goods sales tax as a dedicated source of revenue for the TPWD's park operations. The intent of the Legislature in switching the department's source of revenue from the cigarette tax to that portion of the general sales tax attributable to sporting-goods (less apparel and general footwear) was to provide a revenue base that would coincide with the department's various outdoor objectives. This was the directive from key state leadership. Another major objective was to switch from the decreasing source of revenue provided by the cigarette tax to the increasing source provided by sales tax attributable to sporting-goods. In addition, this source is reflective of the TPWD's mission. Since this switch reduced the state's general revenue fund, the authorized appropriation for the '94-'95 biennium was set equal to the revenue projection for the cigarette tax (\$27 million), and future appropriations were capped at \$32 million. Any amount of revenue over \$32 million collected by the sporting-goods sales tax goes into the General Revenue Fund and is used to certify the budget.

Of the \$27 million appropriated for FY '94-'95, 50% went to state parks (Fund 64) and 50% to local parks (Fund 467.) Since FY '96, the amount of revenue received from the sporting goods sales tax was raised to \$32 million, and then capped. Of the additional \$5 million received, 40% goes to state parks, 40% to local parks and 20% to the Parks and Wildlife Department's capital account (the capital account is authorized to pay debt service on TPWD bonds.) Therefore, state

and local parks annually receive \$15.5 million each, and the TPWD capital account receives \$1 million.

During the 74th Legislature (1995) the department received funding up to the authorized level of \$32 million during the appropriations process. No formal consideration was given to increasing the cap.

During the 75th Legislature (1997) HB 1067 would have “ratcheted up” the authorization from the sales tax on sporting-goods by an amount of \$5 million per biennium over a period of time until the authorization equaled the projected revenue from the sporting-goods sales tax. Upon reaching that point, the cap language would have been repealed. A similar bill was filed in the Senate. Neither bill was passed.

During the 76th Legislature (1999) HB 1692 & SB 286 were filed in an effort to completely lift the sporting goods sales tax cap. Based on the Comptroller’s estimates, the **additional** sporting goods sales tax would be:

FY 2000	\$39,665,000	(TOTAL \$71,665,000)
FY 2001	\$41,830,000	(TOTAL \$73,830,000)
FY 2002	\$44,060,000	(TOTAL \$76,060,000)
FY 2003	\$46,355,000	(TOTAL \$78,355,000)
FY 2004	\$48,722,000	(TOTAL \$80,722,000)

Neither of these bills passed.

During the 77th Legislature (2001) an additional \$5 million was appropriated to Fund 467 (Local Parks) for the purpose of transfers, regional grants and community outreach grants. However, this money comes from the interest on the account and not from the tax itself.

The major hurdle in increasing the sporting-goods sales tax is with the legislative budget writers. Totally removing the cap on the sporting-goods sales tax would face greater opposition than increasing the cap.

It appears that the more widely accepted way to increase the amount of revenue that the TPWD receives from the sporting-goods sales tax may be to statutorily dedicate 0.5% (half of one percent) of the total sales tax collected.

This scenario would substantially increase the amount of revenue that the TPWD received from the sporting goods sales tax.

YEAR	Sales Tax Collected	Comptroller's Est. of Sporting Goods Share (Feb. 1997)	% of Total Sales Tax	Sporting Goods Appropriation	% of Total Sales Tax
1994	\$9.8 Billion	\$50.3 Million	.513	\$27.0 Million	.27
1995	\$10.3 Billion	\$53.3 Million	.517	\$27.0 Million	.26
1996	\$10.8 Billion	\$56.5 Million	.523	\$32.0 Million	.29
1997	\$11.3 Billion	\$59.1 Million	.523	\$32.0 Million	.28
1998	\$12.5 Billion	\$62.1 Million	.497	\$32.0 Million	.26

The statutory definition of "sporting-goods" is "an item of tangible personal property designed and sold for use in a sport or sporting activity, excluding apparel and footwear except that which is suitable only for use in a sport or sporting activity, and excluding board games, electronic games and similar devices, aircraft and powered vehicles, and replacement parts and accessories for any excluded item."

RECOMMENDATION:

The Legislature should consider lifting the cap or, at the very least, raising the cap to \$75 million.

Local Parks Grants (Fund 467) – Assuming that the 30% cut made last session will be restored in 2005, it is recommended that \$5 million be added to this account for a big-city grant fund.

State Parks (Fund 64) – Increase the funding by \$15 - \$20 million annually to give substantial and sustainable funding for operations and repair and maintenance.

Parks and Wildlife Lands Acquisition – To meet the requirements of the TPWD Land and Water Resources Conservation and Recreation Plan, it is recommended that a new fund be created for a ten-year period at \$13 million annually for the acquisition and development of at least four new parks of a minimum of 5000 acres, and additions to existing parks.

CHARGE 2

Review, for the purpose of safety, the discharges of firearms for hunting and recreational shooting in our state-owned river beds.

Discharging Firearms in State-Owned Riverbeds

The Texas Supreme Court stated in 1932, "From its earliest history this State has announced its public policy that lands underlying navigable waters are held in trust by the State for the use and benefit of all the people." The public right to river use is recognized in the Texas Constitution Article 16 section 59(a), "The conservation and development of all of the natural resources of this State,... the navigation of its inland and coastal waters, and the preservation and conservation of all such natural resources of the State are each and all hereby declared public rights and duties; and the Legislature shall pass all such laws as may be appropriate thereto."

Rivers play an important role in the lives of Texans, s will continue to be a focal point of outdoor recreation as the population expands. Rivers are owned by Texas and open to the public; they are used by campers, fisherman, hikers, wildlife watchers kayakers, hunters and sport shooters. The rivers are also used by many different types of youth groups, such as the scouts and campers. There are also an increasing number of landowners building homes near the rivers. During the interim hearings, the committee heard testimony from citizens concerned that these varied uses could present potential safety issues, such as kids playing on the river or families picnicking nearby while someone may be hunting or targeting shooting in close proximity.

Recommendations

The legislature should receive and consider input from any concerned parties when hearing proposed legislation regarding the discharge of firearms in state owned riverbeds.

CHARGE 3

Review the missions and goals of the Texas Commission on the Arts, the Texas Historical Commission and the Texas State Library and Archives Commission and consider possible consolidation.

Review the missions and goals of the Texas Commission on the Arts, the Texas Historical Commission and the Texas State Library and Archives Commission and consider possible consolidation.

For many years the Texas Historical Commission, Texas Parks and Wildlife Department, State Library and Archives Commission, and the Texas Commission on the Arts have played a very important part in preserving, protecting and promoting Texas. Since their creation they have evolved in order to accommodate the needs of Texans. For example, in 1895 the Legislature created the Fish and Oyster Commission to regulate fishing. The Game Department was added to the commission in 1907. The State Parks Board was created as a separate entity in 1923. In 1951, the term oyster was dropped from the commission's name, and in 1963, the Parks Board and the Game and Fish Commission were merged to form the Texas Parks and Wildlife Department.

During the committee's work on this charge Chairman Hilderbran directed the agencies to form a working group made up of directors from the Texas Historical Commission, Texas Parks and Wildlife Department, State Library and Archives Commission, and the Texas Commission on the Arts. The purpose of the working group is for the agencies to determine ways to increase productivity through realignment and collaboration, and to report their findings back to the committee. In 2007 the State Library and Archives Commission, Texas Commission on the Arts, and the Texas Historical Commission are scheduled for Sunset Review. The committee feels it would not be in the best interest of the agencies to undergo a massive consolidation until such review is complete in 2007.

The agencies have agreed to recommend the following course of action to the House Committee on State Cultural and Recreational Resources:

1. The agencies request a thorough and careful study of the wide range of issues related to interagency cooperation and possible consolidation because we believe the process could be a valuable mechanism to recognize additional opportunities to achieve efficiencies among agencies and improve services to our customers.
2. The agencies are anxious to explore opportunities to identify and implement new ways to share resources and build on our current interagency cooperation and interaction. This will provide a structure to enable the "virtual" consolidation of agency efforts and resources.
3. To reduce any unnecessary duplication of effort, the agencies recommend that the upcoming Sunset Advisory Commission review of the Texas Commission on the Arts, the Texas Historical Commission, and the Texas State Library and Archives Commission be the vehicle for the study of agency functions, missions, and constituencies.

This will provide an independent, objective appraisal of the opportunities for further cooperation or consolidation and will also be a mechanism to consider all other relevant agencies of state government as part of any consolidation initiative. It will also afford the public ample opportunity to offer comments and suggestions.

To ensure a comprehensive review of potential consolidation efforts, there are other agencies

that may be possible candidates for inclusion: the State Preservation Board, State Cemetery Committee, the San Jacinto Historical Advisory Board, Governor's Office of Economic Development and Tourism, Texas Film Commission, Texas Music Office, State Law Library, Legislative Reference Library, the Archives & Records Division of the Texas General Land Office, and the cultural heritage and resource functions performed by many state universities.

4. The agencies believe there would be significant benefit for the executive directors and senior staff of our agencies to meet together on a regular basis. We will plan to hold the first of these meetings before the end of the December. At that time, we will decide on the schedule for future meetings.

These meetings will be opportunities to share information about agency programs, initiatives, and concerns. The meetings will focus on interagency coordination and synergistic resource sharing efforts.

5. The agencies will explore the opportunities to use the formal and informal advisory boards to provide input and informal review of cross-agency initiatives.

6.As a precursor to the Sunset process, the agencies will initiate a compilation and evaluation study of the organizational structures used in other states. We will use this information as a benchmark and to identify best practices for our efforts.

The agencies will also review previous studies and recommendations for cooperation and consolidation of agency functions. This will provide additional background that could be a useful starting point for future interagency collaboration and resource sharing.

7.The agencies will explore the value of developing a formal Memorandum of Understanding to formalize the actions identified in this report, and to identify specific opportunities for collaboration and resource sharing. By beginning this in advance of the Sunset process, some of these initiatives can be started as soon as possible.

8.Finally, the agencies have committed to providing the committee chairman with periodic written reports on the progress of this plan of action.

Texas Parks and Wildlife Department

Mission

To manage and conserve the natural and cultural resources of Texas and to provide hunting, fishing and outdoor recreation opportunities for the use and enjoyment of present and future generations.

State Library and Archives

Mission

The mission of the Texas State Library and Archives Commission is to preserve the record of government for public scrutiny, to secure and make accessible historically significant records and other valuable resources, to meet the reading needs of Texans with disabilities, to build and sustain statewide partnerships to improve library programs and services, and to enhance the capacity for achievement of individuals and institutions with whom we work.

Texas Commission on the Arts

Mission

- To preserve and develop the arts and cultural industries of Texas,
- To expand the artistic, educational, and cultural opportunities for all Texans,
- To conserve Texas' rich and diverse artistic and cultural heritage,
- To encourage the utilization of the arts toward the discovery of creative solutions to address the challenges facing Texas, and
- To ensure that the arts continue and grow as a major contributor to the cultural and economic well-being of each and every Texan.

Texas Historical Commission

Mission

To protect and preserve the state's historic and prehistoric resources for the use, education, enjoyment and economic benefit of present and future generations.

Recommendations

The committee should continue to receive up dates on the progress the working group is making and the committee should continue to advise them. The Legislature considers realignment of historic sites from the TPWD to the THC under the following conditions:

1. The site may be moved from the TPWD to the THC but funding would not.
2. If one historic site goes they all go no (cherry picking.)
3. The local friends groups must approve the move from a TPWD site to a THC site.

CHARGE 4

Research heritage, cultural, recreational and historical tourism programs in which the state is involved and explore new ways to promote and improve tourism in the state.

Tourism

In December 2003, the Office of the Governor, Economic Development and Tourism (EDT), the Texas Department of Transportation (TxDOT), Texas Parks and Wildlife Department (TPWD), the Texas Commission on the Arts (TCA), and the Texas Historical Commission (THC), formalized a new Memorandum of Understanding (MOU) to improve coordination of statewide tourism marketing efforts. As a result of the MOU, a joint strategic tourism plan was formulated to provide the most efficient and effective expenditure of funds while establishing goals and objectives, and to develop a joint measure of return on investment. You can view the plan by visiting <http://www.travel.state.tx.us>.

The MOU Partners

Office of the Governor, Economic Development & Tourism (EDT)
Texas Department of Transportation (TxDOT)
Texas Commission on the Arts (TCA)
Texas Parks and Wildlife Department (TPWD)
Texas Historical Commission (THC)

Tourism, by generating revenues and jobs, has long been recognized as an important economic development tool. Tourism in Texas is a \$41.4 billion industry and visitor spending in the state directly supported 451,000 jobs in 2002. Tourism marketing efforts generated over 2 million inquiries for Texas travel literature.

The State of Texas provides funding to state entities to support and facilitate the growth of the state's tourism industry. These entities conduct a variety of tourism-related activities that fall into three distinctly different, yet complimentary, functions that are essential for achieving an effective statewide tourism effort: product development, marketing, and customer service.

Recommendations

The Legislature should watch very closely the progress of the Strategic Tourism Plan created by the MOU to ensure its efficiency. Investing in marketing Texas to both Texans and non-Texans delivers a tremendous return to this great state. The committee is looking forward to dealing with any tourism issues in the upcoming 79th session.

CHARGE 5

Research the regulation and control of scenic by-ways and billboards.

Scenic by-ways and Billboards

The committee asked both Scenic Texas and the Outdoor Advertising Association of Texas to submit for the report the issues as they see them.

Regulation of Billboards in Texas

Scenic Texas

This is generated by the various and repeated complaints we receive from both our organization's members and other non-members.

The Problem: Citizens have no local voice and economic development is negatively impacted because of the proliferation of billboards along our roadways. There are approximately 30-35,000 existing billboards along Texas roadways. At the current rate of 550 new permits issued each year, 5500 more will be constructed in the next 10 years; 11,000 will be constructed in the next 20 years; and in 50 years, we will leave our grandchildren and great-grandchildren almost 60,000 billboards, double the number we have today. Nearly 250 Texas cities have stopped new billboard permits and more join each day. As this growing trend continues and the population and building development continues to migrate outside the metropolitan areas, new billboards are following--outside of cities' jurisdictions but along their gateways, and along the more scenic areas of our State.

The Goal: Local Control. This has worked well in cities. With citizen input, cities have made a variety of decisions: nearly 250 stopped new billboards altogether; numerous others have stopped new permits along certain roads; and still others have decided against city controls. This allows the community members to have a voice in how they want the roads in their community to look and it also allows the governing body the opportunity to hear from all, rather than a few, interested parties--the billboard industry, landowners, advertisers, local businesses, and residents--before deciding whether to take any action and if they do take action, how much to take.

Solution: Provide counties with the option to stop or regulate new billboard construction on roads that lie outside a city's ETJ or corporate limits. This could be in the form of a county commission order sent to TxDOT, the agency who would continue to permit and enforce in a manner identical to the way they currently act in non-certified cities. In general, certified cities do their own permitting and enforcement. The effect would be: for county residents, landowners and business owners to have a local forum; county commissioners to have a local tool to use at their option; for there to be no regulatory burden or cost to the county; there to be no impact on on-premises signage; and there to be no impact on existing billboards if not more than 60% destroyed (existing TxDOT standard.) This would also provide the same administrative hearings and appeals and judicial process that currently exists at TxDOT so if a permit is improperly denied, there is a method of appeal.

In addition to a county option, this session we will support any local requests to add roads to those already protected under the Section 391.252 of the Transportation Code, and any legislation that would increase or strengthen the enforcement of illegal signs, whether bandit or outdoor advertising signs. We will further support the following other legislative initiatives:

1. Texas becoming the 50th state to join the national scenic byways program. Because this program has no impact on existing billboards and little to no impact on new billboards, we don't consider it a billboard control initiative but instead a program that allows communities to protect and honor their historic and culturally significant roadways and fund projects on those approved roadways with new federal dollars.

2. Green Ribbon funding: a public-private partnership that mandates non-invasive tree, shrub and grass plantings in non attainment and near non-attainment counties (under the Clean Air Act.)

Outdoor Advertising Association of Texas

The regulation for placement and regulation of billboards is a multi-layered situation and includes regulation by Federal, state and local governmental entities.

Federal Regulation–

The Highway Beautification Act (HBA) of 1965 set out to, among other things, controls outdoor advertising along our highways and byways to “Promote the safety and recreational value of public travel, and to preserve natural beauty.”

Any road way designated as part of the National Highway System (NHS) must adhere to rules and regulations as outlined in Title 23 of the United State Government Code. Rules and regulations include restrictions on spacing, set back, lighting, size and placement. As of May 1972 the U.S. Government has agreements with all 52 states to regulate billboards. The HBA sets minimum requirements that the states must uphold. It is up to the individual states to determine if the restrictions should be more rigid than those outlined in the federal regulation. HBA requires just compensation (amended in 1978 to be defined as “cash” compensation) when any lawfully erected outdoor advertising display is required to be removed through condemnation proceedings by local governmental entities. The law also carries a 10 percent penalty for state for non-compliance.

The federal regulations allow for the designation of roadways to become part of the National Scenic Byways program. The federal program forces the removal of all illegal signs and prohibits the construction of new billboards. Additionally it allows for the byway to be segmented based on commercial and industrial areas.

State Regulation–

Texas signed its agreement with the federal government in 1972 and has extensive regulations codified in Section 21 of the Texas Administrative Code for the construction and regulation of billboards. By statute, this regulation of outdoor advertising displays and the requisite enforcement of the code are given the Texas Department of Transportation. The comprehensive rules do not allow billboards to be placed in areas where there is no commercial activity. It also details all aspect of the rules concerning the height, size, spacing and lighting of the signs.

Municipal Regulation-

Section 21 of the TAC allows a municipality to control signage in lieu of state regulation once a series of steps have been taken to insure compliance with federal guidelines. In 1985, the state legislature passed HB 1330 which allowed municipalities to extend their sign control jurisdiction to include the ETJ. Many cities have opted for certification and have ordinances in place that not only regulate within their city limits, but their extra territorial jurisdiction as well. City regulations can be more restrictive than state regulations and usually are.

County Regulation--

In Texas, counties only have the power that is specifically given to them by the state legislature. Hence, counties are the only major political subdivisions of the state that do not have ordinance making authority. They also lack the ability to zone land for a particular use. Counties in Texas have never been given the authority to regulate off-premise commercial signs because it is unnecessary due to the extensive regulation and the federal, state and municipal level.

As you can see from the summary above that the billboard industry is highly and sufficiently regulated and should require no additional regulation. We want the industry to continue to have a positive impact on the Texas economy. As the most affordable type of advertising a small business can buy it is essential that the form of communication is not hindered further.

Recommendations

The Legislature should continue to pay close attention to these issues, as they are very important to Texas.

Appendix