

SENATE BILL 352

TEXAS BOARD OF PARDONS AND PAROLES

The Texas Board of Pardons and Parole was established by constitutional amendment in 1936 as a citizen's Board to promote acts of executive clemency and paroles to the Governor, who had sole decision-making authority in these areas. In 1983 the Texas Constitution was amended to remove the Governor from the parole process and established the Parole Board with six full-time Board members. This change gave authority to the Parole Board for parole selection, supervision, and revocation. The Governor retained authority to grant executive clemency, but only on the recommendation of the Parole Board.

The Board of Pardons and Parole currently consists of eighteen members appointed by the Governor. The Board decides who is granted parole and under what conditions, revokes parole when serious violations occur, and recommends to the Governor who should be granted clemency. While persons released on parole or mandatory supervision must abide by conditions established by the Parole Board, they are supervised by the parole officers employed by the parole division of the Texas Department of Criminal Justice (TDCJ).

During the 75th Session, the Legislature adopted recommendations by the Texas Sunset Commission to improve the Board's ability to manage its affairs and its parole revocation hearings. Another two year review of the Board of Pardon and Parole by the Sunset Commission resulted in more recommendations to the 76th Legislature.

The 76th Legislature adopted additional Sunset recommendations without modification. The provisions of Senate Bill 352 consist entirely of updates by the Sunset Commission's

standard across-the board recommendations as applied to the Parole Board. Across-the-board recommendations are statutory administrative policies adopted by the Sunset Commission that enhance "good government" standards for state agencies. The recommendations are applied to every state agency reviewed by the Sunset Commission.¹

¹ "Texas Department of Criminal Justice, Board of Pardons and Parole, Correctional Managed Health Care Advisory Committee," report prepared for the 76th Legislature, Sunset Advisory Commission, Austin, 1998

Enrolled

ENROLLED

76th-'99

S.B. No. 352

AN ACT

1 relating to requirements for membership on or employment by the
2 Board of Pardons and Paroles.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

4 SECTION 1. Subsection (b), Section 508.031, Government Code,
5 is amended to read as follows:

6 (b) Appointments to the board must be made without regard to
7 the race, color, disability [handicap], sex, religion, age, or
8 national origin of the appointed members.

9 SECTION 2. Section 508.033, Government Code, is amended to
10 read as follows:

11 Sec. 508.033. DISQUALIFICATIONS. (a) A person is not
12 eligible for appointment as a member of the board if the person or
13 the person's spouse:

14 (1) is employed by or participates in the management
15 of a business entity or other organization receiving funds from the
16 department or the board;

17 (2) owns or controls, directly or indirectly, more
18 than a 10-percent interest in a business entity or other
19 organization:

20 (A) regulated by the department; or

21 (B) receiving funds from the department or the
22 board; or

23 (3) uses or receives a substantial amount of tangible
24 goods, services, or funds from the department or the board, other

1 than compensation or reimbursement authorized by law for board
2 membership, attendance, or expenses.

3 (b) In determining eligibility under Subsection (a)(3), the
4 compensation or reimbursement that a board member's spouse receives
5 as an employee of the board or the department may not be
6 considered. This subsection does not affect any restriction on
7 employment or board membership imposed by any other law.

8 (c) A person may not be a member of the board and may not be
9 an employee of the division or the board employed in a "bona fide
10 executive, administrative, or professional capacity," as that
11 phrase is used for purposes of establishing an exemption to the
12 overtime provisions of the federal Fair Labor Standards Act of 1938
13 (29 U.S.C. Section 201 et seq.) and its subsequent amendments, if:

14 (1) the person is an officer, employee, or paid
15 consultant of a Texas trade association in the field of criminal
16 justice; or

17 (2) the person's spouse is an officer, manager, or
18 paid consultant of a Texas trade association in the field of
19 criminal justice. [An-employee-or-paid-officer-of-or-consultant-to
20 a-trade-association-in-the-field-of-criminal-justice-may-not-be-

21 {1}--a-member-of-the-board;-or

22 {2}--an-employee-of-the-division-or-the-board--who--is
23 exempt--from--the--state's--position--classification-plan-or-who-is
24 compensated-at-or--above--the--amount--prescribed--by--the--General
25 Appropriations--Act--for--step-1, salary-group-A17, of-the-position
26 classification-salary-schedule.]

1 (d) ~~[A person who is the spouse of an officer or manager of~~
 2 ~~or paid consultant to a trade association in the field of criminal~~
 3 ~~justice may not be:~~

4 ~~[(1) a member of the board, or~~

5 ~~[(2) an employee of the division or the board who is:~~

6 ~~[(A) exempt from the state's classification~~
 7 ~~plan, or~~

8 ~~[(B) compensated at or above the amount~~
 9 ~~prescribed by the General Appropriations Act for step 1, salary~~
 10 ~~group A17, of the position classification salary schedule.~~

11 ~~[(e)]~~ A person who is required to register as a lobbyist
 12 under Chapter 305 because of the person's activities for
 13 compensation in or on behalf of a profession related to the
 14 operation of the board may not:

15 (1) serve as a member of the board; or

16 (2) act as the general counsel to the board or
 17 division.

18 ~~[(e)]~~ ~~[(f)]~~ In this section, "Texas [a] trade association"
 19 means [is] a [nonprofit] cooperative[7] and voluntarily joined
 20 association of business or professional competitors in this state
 21 ~~[that is]~~ designed to assist its ~~[the association's]~~ members and
 22 its ~~[the association's]~~ industry or profession in:

23 (1) dealing with mutual business or professional
 24 problems; and

25 (2) promoting their common interests.

26 SECTION 3. Subsection (a), Section 508.034, Government Code,

1 is amended to read as follows:

2 (a) It is a ground for removal from the board that [~~if~~] a
3 member:

4 (1) does not have at the time of taking office the
5 qualification required by [~~appointment--is--not--qualified--under~~]
6 Section 508.032(b) [~~508-032-or-508-033(a)~~] for appointment to the
7 board;

8 (2) is ineligible for membership under [~~during-the~~]
9 ~~member's-service-on-the-board-becomes-ineligible-under--Section~~
10 ~~508-033(a)-for-appointment-to-the-board;~~

11 [~~3~~]~~--violates~~] Section 508.033 [~~508-033(e),-(d),-or~~
12 ~~(e)~~];

13 (3) [~~4~~] is unable to discharge the member's duties
14 for a substantial part of the term for which the member was
15 appointed because of illness or disability; or

16 (4) [~~5~~] is absent from more than half of the
17 regularly scheduled board or panel meetings that the member is
18 eligible to attend during each calendar year, except when the
19 absence is excused by majority vote of the board.

20 SECTION 4. Subsections (a) and (c), Section 508.0362,
21 Government Code, are amended to read as follows:

22 (a) A person who is appointed to and qualifies for [~~To--be~~
23 ~~eligible--to--take~~] office as a member of the board or the policy
24 board may not vote, deliberate, or be counted as a member in
25 attendance at a meeting of the board or policy board until the
26 person completes[~~-a-person-appointed-to-the-board-or-policy-board~~

1 must--complete] at least one course of a training program that
2 complies with this section.

3 (c) A person appointed to the board or policy board is
4 entitled to reimbursement [~~for--travel--expenses--incurred--in~~
5 ~~attending--the--training--program~~], as provided by the General
6 Appropriations Act, for the travel expenses incurred in attending
7 the training program regardless of whether the attendance at the
8 program occurs before or after the person qualifies for office [and
9 ~~as-if-the-person-were-a-member-of-the-board-or-policy-board]~~.

10 SECTION 5. Section 508.040, Government Code, is amended to
11 read as follows:

12 Sec. 508.040. PERSONNEL. (a) The policy board shall employ
13 and supervise:

- 14 (1) a general counsel to the board;
15 (2) a board administrator to manage the day-to-day
16 activities of the board;
17 (3) hearing officers;
18 (4) personnel to assist in clemency matters; and
19 (5) secretarial or clerical personnel.

20 (b) The board administrator or the board administrator's
21 designee shall prepare and maintain a written policy statement that
22 implements [~~to--assure--implementation--of~~] a program of equal
23 employment opportunity under which all personnel decisions
24 [transactions] of the board are made without regard to race, color,
25 disability, sex, religion, age, or national origin. The policy
26 statement must include:

1 (1) personnel policies, including policies relating to
2 recruitment, evaluation, selection, [appointment,] training, and
3 promotion of personnel, that show the intent of the board to avoid
4 the unlawful employment practices described by [are-in-compliance
5 with-requirements-of] Chapter 21, Labor Code; and

6 (2) an [a-comprehensive] analysis of the extent to
7 which the composition of the board's personnel is in accordance
8 with state and federal law and a description of [board-workforce
9 that-meets-federal-and-state-laws, rules, and regulations, and
10 instructions promulgated directly from those laws, rules, and
11 regulations;

12 [~~3~~] ~~procedures by which a determination can be made~~
13 ~~about the extent of underuse in the board workforce of all persons~~
14 ~~for whom federal or state laws, rules, and regulations, and~~
15 ~~instructions promulgated directly from those laws, rules, and~~
16 ~~regulations, encourage a more equitable balance; and~~

17 [(4)] reasonable methods to achieve compliance with
18 state and federal law [appropriately--address--those--areas--of
19 underuse].

20 (c) The [A] policy statement [prepared-under-Subsection-(b)]
21 must [cover-an-annual-period,] be updated annually, be [and]
22 reviewed by the Commission on Human Rights for compliance with
23 Subsection (b)(1), and be filed with the governor's office.

24 [~~The-governor's-office-shall-deliver-a-biennial-report~~
25 ~~to-the-legislature-based-on-the-information-received-under~~
26 ~~Subsection-(c).--The-report-may-be-made-separately-or-as-a-part-of~~

1 ~~other-biennial-reports-made-to-the-legislature.~~

2 [(e)] The board administrator or the board administrator's
3 designee shall develop an intra-agency career ladder program that
4 addresses opportunities for mobility and advancement for employees
5 within the board. The program shall require intra-agency posting
6 of all positions concurrently with any public posting.

7 (e) [(f)] The board administrator or the board
8 administrator's designee shall develop a system of annual
9 performance evaluations that are based on documented employee
0 performance. All merit pay for board employees must be based on
1 the system established under this subsection.

2 SECTION 6. Subsection (b), Section 508.042, Government Code,
3 is amended to read as follows:

4 (b) A new member may not participate in a vote of the board
5 or a panel, deliberate, or be counted as a member in attendance at
6 a meeting of the board or policy board until the member completes
7 the program.

8 SECTION 7. (a) Subsection (c), Section 311.031, Government
9 Code, provides that an amendment made to a code's source law at the
10 same session the code is enacted is preserved and given effect as
11 part of the code provision that revised the statute so amended.
12 Section 508.033, and Subsection (a), Section 508.034, Government
13 Code, as set out in this Act, give effect to those changes made by
14 Section 2, Chapter 161, Acts of the 75th Legislature, Regular
15 Session, 1997. Subsections (a) and (c), Section 508.0362,
16 Government Code, as set out in this Act, give effect to those

1 changes made by Section 7, Chapter 161, Acts of the 75th
2 Legislature, Regular Session, 1997. Section 508.040, Government
3 Code, as set out in this Act, gives effect to those changes made by
4 Sections 5 and 6, Chapter 161, Acts of the 75th Legislature,
5 Regular Session, 1997.

6 (b) To the extent of any conflict, this Act prevails over
7 another Act of the 76th Legislature, Regular Session, 1999,
8 relating to nonsubstantive additions and corrections in enacted
9 codes.

10 SECTION 8. This Act takes effect September 1, 1999.

11 SECTION 9. The importance of this legislation and the
12 crowded condition of the calendars in both houses create an
13 emergency and an imperative public necessity that the
14 constitutional rule requiring bills to be read on three several
15 days in each house be suspended, and this rule is hereby suspended.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 352 passed the Senate on April 15, 1999, by a viva-voce vote.

Secretary of the Senate

I hereby certify that S.B. No. 352 passed the House on May 22, 1999, by a non-record vote.

Chief Clerk of the House

Approved:

Date

Governor

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 76th Regular Session

April 21, 1999

TO: Honorable Pat Haggerty, Chair, House Committee on Corrections

FROM: John Keel, Director, Legislative Budget Board

IN RE: SB352 by Brown, J. E. "Buster" (Relating to requirements for membership on or employment by the Board of Pardons and Paroles.), As Engrossed

No significant fiscal implication to the State is anticipated.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 696 Department of Criminal Justice

LBB Staff: JK, MD, JN

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 76th Regular Session

March 28, 1999

TO: Honorable Ken Armbrister, Chair, Senate Committee on Criminal Justice

FROM: John Keel, Director, Legislative Budget Board

IN RE: SB352 by Brown, J. E. "Buster" (Relating to requirements for membership on or employment by the Board of Pardons and Paroles.), **As Introduced**

No significant fiscal implication to the State is anticipated.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 696 Department of Criminal Justice
LBB Staff: JK, MD, JN

LEGISLATIVE BUDGET BOARD
Criminal Justice Policy Impact Statement

April 22, 1999

TO: Honorable Pat Haggerty, Chair
Committee on Corrections
House
Austin, Texas

IN RE: Senate Bill No. 352, As
Engrossed
By: Brown, J. E. "Buster"

FROM: John Keel, Director

In response to your request for a Criminal Justice Policy Impact Statement on SB352 (Relating to requirements for membership on or employment by the Board of Pardons and Paroles.) this office has determined the following:

No significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies is anticipated from any provisions of this bill that authorize or require a change in the sanctions applicable to adults convicted of felony crimes.



LEGISLATIVE BUDGET BOARD
Criminal Justice Policy Impact Statement

February 17, 1999

TO: Honorable Ken Armbrister, Chair
Committee on Criminal Justice
Senate
Austin, Texas

IN RE: Senate Bill No. 352
By: Brown, J.E. "Buster"

FROM: John Keel, Director

In response to your request for a Criminal Justice Policy Impact Statement on SB352 (Relating to requirements for membership on or employment by the Board of Pardons and Paroles.) this office has determined the following:

No significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies is anticipated from any provisions of this bill that authorize or require a change in the sanctions applicable to adults convicted of felony crimes.

**Update on the Implementation of SB 352
Texas Board of Pardons and Paroles**

Bill Reference	Bill Provision	Implementation Status
SECTION 1. Line 1-4	Amendment to Subsection (b), Section 508.031, Government Code, pertaining to appointment of members.	Appointment to the Board of Pardons and Paroles is a matter conducted in the Office of the Governor. No action required by the Board of Pardons and Paroles.
SECTION 2. Line 1-9	Amendment of Section 508.033, Government Code pertaining to appointment and disqualification of members.	This provision states specific criteria relating to qualifications for appointment. Appointment to the Board of Pardons and Paroles is a matter conducted in the Office of the Governor. No action required by the Board of Pardons and Paroles.
SECTION 3. Line 3-26	Amendment to Subsection (a), Section 508.034, Government Code pertaining to removal of members.	Removal of a member from the Board of Pardons and Paroles is a matter conducted in the Office of the Governor. No action required by the Board of Pardons and Paroles.
SECTION 4. Line 4-20	Amendment of Subsections (a) and (c), Section 508.0362, Government Code, pertaining to training of members before voting and reimbursement for travel expenses incurred while attending a training program.	The Board of Pardons and Paroles conducts a comprehensive training and education program that newly appointed Board and Policy Board members are required to complete before assuming their duties. Members must complete this training and education program before participating in a vote of the Board or Panel. At TAB A is Board Resolution 98-9.02, dated September 17, 1998, adopting the development of a comprehensive training and education program for Board and Policy Board Members.
SECTION 5. Line 5-10	Amendment to Section 508.040, Government Code, pertaining to employees of the Board. The section relates to the program of Equal Employment Opportunity (EEO) within the Texas Board of Pardons and Paroles (Subsections (b) and (c)).	The Board is a small agency that has many historical and present day ties with the Texas Department of Criminal Justice (TDCJ). While the Board is a separate agency, it has no separate agency number and its appropriations are provided for as a specific strategy within the umbrella of appropriations for TDCJ (See TAB B for relevant references from House Bill No. 1, the General Appropriations Act, 76th Legislature, Regular Session).

**Update on the Implementation of SB 352
Texas Board of Pardons and Paroles**

Bill Reference	Bill Provision	Implementation Status
<p>SECTION 5. Line 5-10, continued</p>	<p>Amendment to Section 508.040, Government Code, pertaining to employees of the Board. The section relates to the program of Equal Employment Opportunity (EEO) within the Texas Board of Pardons and Paroles (Subsections (b) and (c)).</p>	<p>Since the 1993 legislative reorganization returning the Board to a separate status, TDCJ staff has performed various supporting budget and personnel services for the Board. Accordingly, the Board has adopted TDCJ personnel policies, including those relating to recruitment, evaluation, selection, training, and promotion of personnel and intended to assure avoidance of any unlawful employment practices described by Chapter 21, Labor Code (See <i>TAB C</i> for Board-Resolution 98-5.01, dated May 21, 1998, adopting TDCJ personnel policies.)</p> <p>The TDCJ includes the Board within its programs to comply with the laws on EEO and in its annual report to the Texas Commission on Human Rights (TCHR). By direction of the Policy Board, the Board Administrator works with the TDCJ Human Resources Division in these matters. (See <i>TAB D</i> for (1) Board-Policy 98-5.01, dated May 21, 1998, at Section III.C; (2) Interoffice Memorandum from Board Administrator to TDCJ Director of Human Resources, Subject: Recent Policy Board Actions of Interest, dated June 9, 1998, less enclosures and (3) Interoffice Memorandum from the Board Administrator to the TDCJ Director of Human Resources, Subject: Request for Assistance, dated June 3, 1999, less enclosures).</p> <p>The TDCJ Human Resources Division now provides the Board with specific EEO statistical data regarding our workforce. At <i>TAB E</i> are the most recently completed TDCJ Human Resources/Administrative Support EEO Workforce Profiles providing analysis of the extent to which the composition of Board personnel is in accordance with state and federal laws. This data, along with the implemented personnel policies and practices, clearly demonstrates the Board's active commitment to have in place reasonable methods to achieve compliance with state and federal law pertaining to EEO matters.</p>

**Update on the Implementatin of SB 352
Texas Board of Pardons and Paroles**

Bill Reference	Bill Provision	Implementation Status
SECTION 5. Lines 5-10, continued	Amendment to Section 508.040, Government Code, pertaining to employees of the Board. The section relates to the program of Equal Employment Opportunity (EEO) within the Texas Board of Pardons and Paroles (Subsections (b) and (c)).	<p>At TAB F are the 1998 and 1999 written policy statements of the Board Administrator reminding employees of the EEO Program under which all personnel decisions are to be made without regard to race, color, sex, national origin, age, religion, disability, or genetic information. These annual statements complement those issued to all TDCJ and Board employees by the TDCJ Executive Director and describe the personnel policies intended to avoid any unlawful employment practices and provide employees with information on making work-related complaints. These statements, and related background information, have been provided to the TCHR (See TAB G).</p> <p>Based on the foregoing, it should be evident that the close working relationships existing between the Board and TDCJ are critical to the proper discharge of the of the legislative intent of this subsection so as to assure that a meaningful EEO program is in place for all employees.</p>
SECTION 6. line 7-12	Amendment to Subsection (b), Section 508.042, Government Code pertaining to voting by a new member.	The information in Section 4 above describes how this requirement has been accomplished.
SECTIONS 7, 8 and 9 Line 7-18, etc.	Preservation, Effective Date and Emergency Clauses	No action required.