

BILL ANALYSIS

C.S.H.B. 2730
By: Kolkhorst
Public Safety
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Legislature created the Department of Public Safety (DPS) in 1935 by consolidating the Texas Rangers from the Adjutant General, and the Texas Highway Patrol from the State Highway Department. The Rangers trace their history to 1823 when Stephen F. Austin hired 10 men to protect the colonists, and the Highway Patrol dates back to the late 1920s. Today, DPS' mission is to enforce laws to protect public safety, and to prevent and detect crime. The agency accomplishes its mission through four main functions: traffic law enforcement; criminal law enforcement; license regulation, including driver licenses; and emergency management. The agency also regulates the private security industry in Texas through the Private Security Board (Board).

DPS and the Board are subject to the Sunset Act and will be abolished on September 1, 2009, unless continued by the Legislature. The Sunset review found that Texas continues to need DPS and the Board, but changes are necessary to modernize the agency.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Private Security Board in SECTION 4.02, SECTION 4.17, SECTION 4.19, SECTION 4.23, SECTION 4.31, SECTION 4.38, SECTION 4.44, SECTION 4.45, SECTION 4.55, SECTION 4.56, SECTION 4.58, SECTION 4.63, SECTION 4.66, SECTION 4.74, SECTION 4.75, SECTION 4.76, SECTION 4.78, SECTION 4.82, SECTION 4.85, SECTION 4.88, SECTION 4.90, SECTION 4.103, and SECTION 4.106 of this bill. Rulemaking authority is expressly granted to the Public Safety Commission in SECTION 4.106 of this bill. Rulemaking authority is expressly granted to the Department of Public Safety in SECTION 7.08 of this bill.

ANALYSIS

Increase Vehicle Inspection Program Oversight

The substitute requires DPS to manage the Vehicle Inspection (VI) program from Austin with a civilian program director. The substitute specifies that the duties of the program director include responsibility for the quality of the VI program, coordination of regional offices, compilation of regional and statewide performance data, and setting goals for the entire program.

Clarify Emergency Management Roles

The substitute changes the name of the Governor's Division of Emergency Management to the Texas Division of Emergency Management (TDEM), and specifies that it is a division of DPS. C.S.H.B. 2730 specifies that TDEM is managed by a chief appointed by the DPS director. The substitute requires the following individuals to meet once every two months to ensure a unified approach to emergency management and homeland security: a DPS representative, a TDEM representative, a Governor's Office of Homeland Security representative, the presiding officer of the Homeland Security Council, and a state agency representative from the Emergency Management Council. The substitute contains several conforming changes to establish the new name in statute.

Make Various Changes to Emergency Management

The substitute specifies that the Division Chief, instead of the Governor or Emergency Management Council, may dispense a gift, grant, or loan received for emergency services or disaster recovery, and that the Public Safety Commission, instead of the Governor, determines

the amount to be dispensed. C.S.H.B. 2730 requires the Division to annually report on the status of the Disaster Contingency Fund to the Speaker of the House and the Lieutenant Governor. The substitute adds the Speaker of the House and Lieutenant Governor, or their designees, to the Homeland Security Council, and replaces the Chair of the House Committee on Defense Affairs and State-Federal Relations with the Chair of the House Committee on Public Safety.

C.S.H.B. 2730 requires the Division to make available, upon request by members of the Legislature, a list of state employees who are eligible for leave as certified disaster service volunteers, and a list of state employees who are eligible for leave as amateur radio operators. The substitute changes the definition of employee for a Texas Task Force 1 member, for workers' compensation purposes, to someone who is injured during training, rather than injured during any training session, sponsored by Texas Task Force 1. C.S.H.B. 2730 adds the chairs of the House and Senate Natural Resource committees to the Drought Preparedness Council.

Discourage Misuse of Administrative License Revocation Witnesses

C.S.H.B. 2730 requires affidavits of breath test operators and breath test supervisors to be admissible in administrative license revocation (ALR) hearings without the appearance of the operator or supervisor, unless the judge finds that justice requires the operator or supervisor to be present. The substitute requires the defense to request breath test operators and breath test supervisors by subpoena, instead of written notice, in ALR hearings.

Conform Private Security Licensing and Enforcement Functions to Commonly Applied Practices

The substitute authorizes the Private Security Board, housed at DPS, to issue endorsements to simplify regulation for individuals who perform multiple services. The substitute specifies that individuals who perform multiple services must obtain one registration, and then obtain endorsements for each service they perform, rather than having to obtain multiple registrations, as currently required.

The substitute requires the Board to adopt rules necessary to comply with Chapter 53 of the Occupations Code (Consequences of Criminal Conviction). The substitute specifies that the rules must list the specific offenses for each category of regulated persons for which a conviction would constitute grounds for the Board to take disciplinary action or deny a license.

The substitute makes numerous technical corrections that change references to the obsolete Texas Commission on Private Security to the current Texas Private Security Board. C.S.H.B. 2730 changes "director" of the Board to "chief administrator" to eliminate potential confusion with the director of DPS, and clarifies that the chief administrator performs duties prescribed by both the Board and DPS. The substitute clarifies current practice that Board staff are DPS staff. The substitute repeals several provisions that duplicate existing DPS provisions, such as annual reporting requirements, and other obsolete provisions. The substitute categorizes existing license classifications to clarify the licensing and endorsement process.

The substitute authorizes Private Security Board members to receive reimbursement for all travel expenses related to Board business, not just transportation.

C.S.H.B. 2730 eliminates fee caps and requires the Board to recommend fee amounts to the Public Safety Commission for establishment in rules.

The substitute authorizes the Private Security Board to require jurisprudence exams for applicants for endorsement to determine the applicant's knowledge of the laws and rules that guide their professions. The substitute specifies that the Board must adopt rules before implementing the exam.

The substitute requires Private Security Board members who were involved in the investigation of complaints to recuse themselves from the determination of disciplinary action.

C.S.H.B. 2730 increases the amount of the Private Security Act's maximum administrative penalty from \$500 to \$5,000, and requires the Private Security Board to develop an administrative penalty matrix in rule.

The substitute requires appeals of Private Security Board disciplinary action to district court to be reviewed under the substantial evidence standard.

The substitute repeals Occupations Code Section 1702.003 to remove the Private Security Board's Sunset date, continuing the Private Security Act and Board, and making future Sunset reviews concurrent with the Department of Public Safety.

The substitute adds standard Sunset language requiring the Board to develop a policy to encourage the use of negotiated rulemaking and alternative dispute resolution, and updates standard Sunset language requiring the Private Security Board to maintain information on all complaints and notify the parties about policies for and status of complaints.

Require Limited Scope Sunset Review

C.S.H.B. 2730 requires the Sunset Advisory Commission to prepare a report on DPS in 2010 that studies the agency's implementation of the recommendations in the 2008 information technology audit and a civilian business management model for the Driver License Program. The substitute requires the Sunset Advisory Commission to submit the report by February 15, 2011.

Delete Agency Structure Language

The substitute deletes language that prohibits DPS from exceeding the number of divisions existing on August 22, 1957.

Authorize Online Concealed Handgun License (CHL) Renewal Class and Test, and Require DPS to Put Certain CHL Instructor Information Online

The substitute authorizes DPS to allow the classroom portion of the concealed handgun licensing renewal class and the written test to be offered online. The substitute adds phone numbers, and email and website addresses of concealed handgun license holders to the information that is subject to disclosure to criminal justice agencies. The substitute requires, rather than authorizes, DPS to make and distribute to the public a list of qualified handgun instructors and adds the requirement that the list must include the instructors' name, phone number, and email and website addresses. C.S.H.B. 2730 requires DPS to remove a qualified handgun instructor's information, all or in part, from the list if the instructor makes that request in writing.

Create an Office of Inspector General

The substitute restructures the Office of Internal Affairs into the Office of Inspector General, and requires the Public Safety Commission to appoint the Inspector General, and to directly oversee the activities of the Office. C.S.H.B. 2730 requires the Inspector General to report directly to the Commission regarding performance of and activities related to investigations. The substitute establishes that the mission of the Office of Inspector General is to independently and objectively investigate criminal activity occurring in all divisions of the Department; allegations of wrongdoing by department employees; crimes committed on department property; and serious breaches of department policy.

Personnel Records of DPS Commissioned Officers

C.S.H.B. 2730 clarifies that the restrictions against disclosure of certain personal information in Chapter 552 of the Government Code (Public Information Act) apply to the personnel records of DPS commissioned officers.

Physical Fitness Standards for Law Enforcement Agencies

The substitute requires state law enforcement agencies to have physical fitness programs for officers in addition to physical fitness standards. The substitute provides that the standards may include individual fitness goals relative to an officer's age and sex. C.S.H.B. 2730 requires each law enforcement agency to adopt a reward policy that provides incentives to officers who participate in the program and meet the standards. The reward incentives must be an amount of administrative leave of not more than four days per year. The substitute deletes current law that a Parks and Wildlife law enforcement officer compensated according to Schedule B who is unable to meet a physical fitness standard may be transferred to a position that does not require the employee to be a commissioned peace officer. The substitute allows a law enforcement agency to temporarily exempt a law enforcement officer from participation in a program or meeting a physical fitness standard, based on the facts and circumstances of the individual case.

The substitute provides that the inability of an officer to participate in a program or meet a standard is just cause to discharge or transfer an officer.

Continue DPS

The substitute continues DPS for 12 years.

Apply and Update Standard Sunset Across-the-Board Recommendations

The substitute updates standard Sunset language prohibiting a person from serving as a Public Safety Commission member or high-level agency employee if the person, or their spouse, is an officer, employee, or paid consultant of a Texas trade association in the field of law enforcement or private security. C.S.H.B. 2730 adds standard Sunset language requiring the Commission to separate its policymaking duties from the agency's management functions. The substitute adds standard Sunset language requiring the Commission to make effective use of technology in its delivery of services and provision of information to the public. The substitute adds standard Sunset language requiring the Commission to develop a policy that encourages the use of negotiated rulemaking and alternative dispute resolution. The substitute updates standard Sunset language requiring DPS to maintain information on all complaints and notify the parties about policies for and status of complaints.

Driver License and Identification Certificate Residency, Expiration, and Format Requirements

The substitute defines resident for driver license and identification certificate purposes, and changes the maximum number of days, from 30 to 90, that a new Texas resident is allowed to operate a vehicle without a Texas license, provided that the resident is older than 16 and has a valid out-of-state license. C.S.H.B. 2730 also changes language related to prosecution under this law from 30 to 90 days.

C.S.H.B. 2730 creates a Class A misdemeanor for someone who, with the intent to defraud or harm another, fails or refuses to comply with Transportation Code Sections 521.054(b) or (c), which generally require notifying DPS within 30 days when the name or address listed on an application, license, or identification certificate changes, and require applying for a duplicate license or certificate.

The substitute specifies that, except for persons under 21 years of age, all DPS driver licenses, commercial driver licenses, and identification certificates must have the same format, appearance, and orientation; contain the same information; and may not include any information not referenced or required by Transportation Code Chapters 521 or 522.

The substitute authorizes DPS to establish a process to verify that applicants actually live at the address they provide to DPS and to deny issuance of a license to an applicant whose address cannot be verified, with some exemptions.

C.S.H.B. 2730 specifies that for driver licenses and commercial driver licenses, DPS must accept – deleting the phrase “as satisfactory proof of identity” – an offender identification card or similar form of identification issued to an inmate by the Texas Department of Criminal Justice.

The substitute adds citizenship status of driver license and identification certificate holders to DPS' indexes of information.

C.S.H.B. 2730 requires each applicant for an original, renewal, or duplicate identification certificate to provide either proof of U.S. citizenship or documentation from the federal agency responsible for citizenship and immigration that authorizes the applicant to be in the U.S., unless the information has been previously provided to DPS. C.S.H.B. 2730 requires noncitizens to present to DPS documentation issued by the U.S. agency responsible for citizenship and immigration that authorizes the applicant to be in the U.S. The substitute prohibits DPS from issuing an identification certificate to a noncitizen applicant who fails or refuses to present documentation. The substitute specifies that these two provisions also apply to sex offenders.

The substitute requires applicants for original, renewal, duplicate, or corrected driver licenses, including commercial driver license renewals and permits, to provide either proof of U.S. citizenship or other documentation required by DPS in Transportation Code Section 521.142(a), unless the information has been previously provided to DPS. The substitute separately specifies

that before DPS may issue an identification certificate or original driver license to applicants who are not U.S. citizens, the applicants must present documentation from the federal agency responsible for citizenship and immigration that authorizes the applicants to be in the U.S.

C.S.H.B. 2730 specifies that applications for original driver licenses must include any other information DPS requires to determine the applicant's residency, as required by DPS or state law.

The substitute clarifies that licenses for citizens, legal permanent residents, or lawful refugees or asylees expire under current law, generally every six years.

The substitute generally specifies that identification certificates and driver licenses for noncitizens (and those who are not legal permanent residents, refugees, or asylees lawfully admitted to the U.S.) expire when the applicant's authorized stay in the U.S. expires or, for applicants with no definite expiration date for an authorized stay in the U.S., on the second anniversary of the date of issuance. C.S.H.B. 2730 specifies that driver licenses for noncitizens (and those who are not legal permanent residents, refugees, or asylees lawfully admitted to the U.S.) 85 years of age or older expire when the applicant's authorized stay in the U.S. expires or, for applicants with no definite expiration date for an authorized stay in the U.S., on the first anniversary of the date of issuance. The substitute specifies that driver licenses, including renewal, duplicate, or corrected licenses, for sex offenders who are not U.S. citizens (and those who are not legal permanent residents, refugees, or asylees lawfully admitted to the U.S.) expire when the applicant's authorized stay in the U.S. expires or, for applicants with no definite expiration date for an authorized stay in the U.S., on the first anniversary of the date of issuance, except that the initial license expires on the second birthday of the license holder occurring after the date of application.

The substitute specifies that commercial driver licenses and permits (including renewals, duplicates, and corrected licenses) for noncitizens and those who are not legal permanent residents, refugees, or asylees lawfully admitted to the U.S. expire on the earlier of the expiration of the applicant's authorized stay in the U.S. or the applicant's first birthday following the date of application, except the initial license expires on the second birthday following the date of application. The substitute applies the same provision to sex offenders who are not citizens or legal permanent residents, refugees, or asylees lawfully admitted to the U.S. C.S.H.B. 2730 specifies that commercial driver licenses and permits (including renewals, duplicates, and corrected licenses) for citizens and legal permanent residents of the U.S., or refugees or asylees lawfully admitted to the U.S. expire on the license holder's second birthday occurring after the application date, instead of the first.

The substitute specifies that provisional licenses for young drivers who are not U.S. citizens (and those who are not legal permanent residents, refugees, or asylees lawfully admitted to the U.S.) expire on the earlier of the expiration of the applicant's authorized stay in the U.S., the applicant's first birthday following the date of application, or the 18th birthday of the license holder.

C.S.H.B. 2730 requires DPS to issue temporary identification certificates, driver licenses, and commercial driver licenses to certificate and license holders whose lawful presence in the U.S. has expired, provided the holder presents to DPS proof of application for an extension of the holder's lawful presence in the U.S. with the federal government. The substitute specifies that a temporary identification certificate expires 120 days after the expiration of the expiring certificate; a temporary driver license expires 180 days after the expiration of the expiring license; and a temporary commercial driver license expires on the 180th day after the date the most recent commercial driver license issued to the person expired. The substitute authorizes DPS to issue a subsequent temporary identification certificate and driver license if the holder presents to DPS information regarding the status of the application for extension of lawful presence in the U.S. with the federal government.

The substitute reduces some of DPS' various license and identification certificate fees to reflect the shorter timeframe for noncitizens (or legal permanent residents or refugees or asylees lawfully admitted to the U.S.) and increases others. The substitute sets the fee for a temporary nonresident commercial driver license at \$100. C.S.H.B. 2730 raises the fee for a commercial

driver license or permit that includes an authorization to operate a motorcycle or moped from \$8 to \$10, and raises the fee for a provisional license or instruction permit from \$5 to \$10.

The substitute repeals the following statutory provisions.

- Government Code Section 411.0195(d) and (e)
- Occupations Code Section 1702.002(4)
- Occupations Code Section 1702.003
- Occupations Code Section 1702.045
- Occupations Code Section 1702.046
- Occupations Code Section 1702.047
- Occupations Code Section 1702.065
- Occupations Code Section 1702.069
- Occupations Code Section 1702.113(e)
- Occupations Code Section 1702.364(j)
- Occupations Code Subchapter K
- Transportation Code Section 522.029(j), as added by Chapter 1319 (S.B. 1260), Acts of the 80th Legislature, Regular Session, 2007

EFFECTIVE DATE

Except as otherwise provided, the Act takes effect immediately upon passage, or if the Act does not receive the necessary vote, the Act takes effect September 1, 2009. Article 3 (administrative license revocation provisions), Article 4 (private security provisions), and Article 7 (driver license and identification certificate provisions) of the bill take effect September 1, 2009.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B. 2730 modifies the original by deleting the requirement that the Governor approve the DPS director's appointment of the Emergency Management Division (Division) Chief, and makes several other changes to the Division. The substitute specifies that the Division Chief, instead the Governor or Emergency Management Council, may dispense a gift, grant, or loan received for emergency services or disaster recovery, and that the Public Safety Commission, instead of the Governor, determines the amount to be dispensed. C.S.H.B. 2730 adds a requirement for the Division to annually report on the status of the Disaster Contingency Fund to the Speaker of the House and the Lieutenant Governor. The substitute adds the Speaker of the House and Lieutenant Governor or their designees to the Homeland Security Council, and replaces the Chair of the House Committee on Defense Affairs and State-Federal Relations with the Chair of the House Committee on Public Safety.

C.S.H.B. 2730 adds a requirement for the Division to make available, upon request by members of the Legislature, a list of state employees who are eligible for leave as certified disaster service volunteers, and a list of state employees who are eligible for leave as amateur radio operators. The substitute adds a change to the definition of employee for a Texas Task Force 1 member, for workers' compensation purposes, to someone who is injured during training, rather than injured during any training session, sponsored by Texas Task Force 1. C.S.H.B. 2730 adds the chairs of the House and Senate Natural Resource committees to the Drought Preparedness Council.

To avoid unintentionally broadening the definition of expert witness, the substitute reinstates an existing phrase regarding expert witnesses in administrative license revocation hearings.

The substitute makes numerous conforming changes and repeals several obsolete provisions in the Private Security Act that were not in the original bill. These changes eliminate duplication with existing DPS policies and to help clarify terms. C.S.H.B. 2730 deletes two requirements that the Private Security Board (Board) make recommendations to the Public Safety Commission (Commission) since statute already specifies that the Board may adopt rules only on approval of the Commission. The substitute specifies that if the Board requires jurisprudence exams, it must, rather than may, develop rules to implement the exams. C.S.H.B. 2730 deletes the instructional provision requiring the Private Security Board to develop rules to implement the Sunset Commission across-the-board language on the complaint process since the provision does not require rules.

The substitute repeals language that prohibits DPS from exceeding the number of divisions existing on August 22, 1957.

C.S.H.B. 2730 changes the name of the office of internal affairs to the office of inspector general, and specifies that the Inspector General reports to the Public Safety Commission, instead of the DPS director, regarding performance of and activities related to investigations.

C.S.H.B. 2730 clarifies that the restrictions against disclosure of certain personal information in Chapter 552 of the Government Code (Public Information Act) apply to the personnel records of DPS commissioned officers.

The substitute adds phone numbers, and email and website addresses of concealed handgun license holders to the information that is subject to disclosure to criminal justice agencies. The substitute requires, rather than authorizes, the Department of Public Safety (DPS) to make and distribute to the public a list of qualified handgun instructors and adds the requirement that the list must include the instructors' name, phone number, and email and website addresses. C.S.H.B. 2730 requires DPS to remove a qualified handgun instructor's information, all or in part, from the list if the instructor makes that request in writing.

The substitute adds requirements for state law enforcement agencies to have physical fitness programs for officers in addition to physical fitness standards. The substitute provides that the standards may include individual fitness goals relative to an officer's age and sex. C.S.H.B. 2730 requires each law enforcement agency to adopt a reward policy that provides incentives to officers who participate in the program and meet the standards. The reward incentives must be an amount of administrative leave of not more than four days per year. The substitute deletes current law that a Parks and Wildlife law enforcement officer compensated according to Schedule B who is unable to meet a physical fitness standard may be transferred to a position that does not require the employee to be a commissioned peace officer. The substitute allows a law enforcement agency to temporarily exempt a law enforcement officer from participation in a program or meeting a physical fitness standard, based on the facts and circumstances of the individual case. The substitute provides that the inability of an officer to participate in a program or meet a standard is just cause to discharge or transfer an officer.

The substitute adds instructional provisions for across-the-board Sunset Commission language on complaints and Public Safety Commission member conflicts of interest to specify that they only apply after the effective date of the Act.

The substitute defines resident for driver license and identification certificate purposes, and changes the maximum number of days, from 30 to 90, that a new Texas resident is allowed to operate a vehicle without a Texas license, provided that the resident is older than 16 and has a valid out-of-state license. C.S.H.B. 2730 also changes language related to prosecution under this law from 30 to 90 days.

C.S.H.B. 2730 creates a Class A misdemeanor for someone who, with the intent to defraud or harm another, fails or refuses to comply with Transportation Code Sections 521.054(b) or (c), which generally require notifying DPS within 30 days when the name or address listed on an application, license, or identification certificate changes, and require applying for a duplicate license or certificate.

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The substitute requires applicants for original, renewal, duplicate, or corrected driver licenses, including commercial driver license renewals and permits, to provide either proof of U.S. citizenship or other documentation required by DPS in Transportation Code Section 521.142(a), unless the information has been previously provided to DPS. The substitute separately specifies that before DPS may issue an identification certificate or original driver license to applicants who are not U.S. citizens, the applicants must present documentation from the federal agency responsible for citizenship and immigration that authorizes the applicants to be in the U.S.

C.S.H.B. 2730 specifies that applications for original driver licenses must include any other information DPS requires to determine the applicant's residency, as required by DPS or state law.

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The substitute makes the bill effective immediately, or if the Act does not receive the necessary vote, the Act takes effect September 1, 2009, with the exceptions of Article 3 (administrative license revocation provisions), Article 4 (private security provisions), and Article 7 (driver license and identification certificate provisions) which are effective September 1, 2009. The introduced bill had an effective date of September 1, 2009.