

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 8, 2009

TO: Honorable Tommy Merritt, Chair, House Committee on Public Safety

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB2730 by Kolkhorst (Relating to the continuation and functions of the Department of Public Safety of the State of Texas and the Texas Private Security Board; providing a penalty.), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.

The Department of Public Safety (DPS) and the Private Security Board (the Board) are subject to the Sunset Act and will be abolished on September 1, 2009 unless continued by the Legislature. The bill contains the following Sunset Commission recommendations regarding DPS and the Board, among others.

- Requires DPS to manage the Vehicle Inspection Program (VIP) as a civilian business and licensing operation with established goals and expected performance outcomes. The Sunset Advisory Commission (Sunset) states Section 1.01 of the bill would not have a significant fiscal impact because DPS already operates VIP with a director.
- Changes Governor's Division of Emergency Management to Texas Division of Emergency Management (TDEM) and clarifies that it is a division of DPS and specifies that DPS' director appoints the chief of TDEM.
- Requires affidavits of breath test operators and supervisors to be admissible in administrative hearings without their appearance unless the judge requires their presence. Sunset states Section 3.01 could have a positive fiscal impact to the state and local communities because fewer breath test operators and supervisors would likely be called to hearings (saving travel and overtime expenses). However, Sunset states the number of witnesses impacted could not be determined. The bill would require administrative law judges at the State Office of Administrative Hearings (SOAH) to spend limited additional time reviewing affidavits and subpoena requests. Both Sunset and SOAH estimate no significant fiscal impact for these provisions.
- Authorizes the Private Security Board to receive reimbursement for travel expenses and to license by endorsement to streamline the licensing process and reduce regulation. Sunset states the travel provisions in the bill would not have a significant fiscal impact since the Board currently receives travel reimbursement. Sunset states the endorsement provisions in Section 4.01 could result in significant reduction in license issuance responsibilities and efficiencies that would reduce staffing needs. However, until the agency is funded for and implements information technology improvements, these staffing reductions may not be realized.

DPS reported to Sunset that their database is outdated (the agency originally planned upgrades to the database in fiscal year 2009) and the database needs to be upgraded before it can implement the proposed endorsement provisions. DPS states the estimated cost of upgrading the database at \$2,000,000 for the biennium. However, Sunset states DPS put the upgrade on hold after an outside audit reorganized the agency's IT priorities. Sunset states the endorsement provisions would be part of the DPS planned upgrade and separating the cost of the provision from the rest of the upgrade would be difficult to determine.

Sunset also states current statute requires the administration of the Private Security Act be a self-leveling function through fees charged to the regulated community. Sunset assumes that any potential savings or costs associated with changes to the Private Security Act would be

offset by increases or decreases in fees and therefore the fee generating provisions of the bill would be revenue neutral.

- Requires the Board to adopt rules necessary to comply with Chapter 53 regarding offenses that would prohibit a person from obtaining or retaining a license under the Private Security Act. Sunset states the Section 4.02 provisions could require staff time to develop the rules, but this is a typical staff responsibility. Sunset states DPS predicts these provisions could result in 30 percent more applicants being eligible and would require three additional staff to process an increase in applications. However, Sunset states that while the number of approvals for licensure may increase, the number of applicants, and the resulting background checks and investigations, would not likely change. In addition, Sunset states the license approval rate would depend on the rules adopted by the Board. Sunset states no significant fiscal impact for these provisions.
- Applies standard Sunset across-the-board language requiring the Board to develop a policy that encourages the use of negotiated rule making and alternative dispute resolution (ADR), as well as designate a trained person to coordinate the Board's ADR efforts. The person designated by the Board to coordinate ADR efforts must be an existing employee of the agency, who would simply expand on existing efforts to achieve agreed settlements. Sunset assumes the potential minimal training costs could be more than offset by reduced costs from avoiding protracted rule making or lengthy contested case hearings.
- Authorizes the Private Security Board to require jurisprudence exams to ensure all licensees understand the laws and rules that guide their professions. Sunset states the Board could experience costs from developing exam questions (should it decide to require exams). However, Sunset states the overall Section 4.80 costs could be recovered through exam fees and therefore the jurisprudence provisions of the bill would be revenue neutral.
- Eliminates fee caps in the Private Security Act. Regarding Section 4.19, Sunset states the Private Security Act specifies that fees collected must produce sufficient revenue to administer the chapter without producing unnecessary fund balances. Therefore, Sunset assumes the fee generating provisions of the bill would be revenue neutral.
- Increases the amount of the Private Security Act's maximum administrative penalty from \$500 to \$5,000. Regarding Section 4.103, Sunset states the Board's ability to assess higher administrative penalties could potentially increase revenue deposited to the General Revenue Fund, but the Board does not anticipate assessing the maximum penalty often, if ever. Sunset states the administrative penalty provisions of this bill would have no significant revenue impact.
- Requires the Public Safety Commission to hire the Director of the Office of Inspector General (OIG) and to directly oversee the activities of the Office. Sunset states DPS already operates the OIG with seven FTEs. Sunset states staff outside of the Office currently perform additional internal affairs investigations and these resources could be transferred to the OIG. DPS states these provisions would require an additional 36 FTEs to comply with the bill requirements. Sunset states the provisions of the bill would not increase the overall number of internal affairs investigations, but merely consolidate efforts within a single office. Therefore, Sunset assumes these provisions in the bill would have no significant fiscal impact.
- Authorizes DPS to put the classroom portion of the concealed handgun licensing renewal class and written test online. Sunset states that DPS staff indicate the agency would not develop the class and test, but that qualified concealed handgun license instructors would, which is current practice. Because these instructors do not work for the State, Sunset assumes the instructors would absorb the cost of developing an online class and exam and that there would be no significant fiscal impact to the state for these provisions.
- Requires the Sunset Commission to conduct a limited scope review of DPS in 2011 that studies the agency's implementation of the 2008 information technology audit and a civilian business management model for the driver license program. DPS states this provision would require the agency to move the current commission based driver license division to a civilian based business model. DPS states they would require an additional 264 civilian FTEs to accommodate the suggested change. As part of DPS exceptional items for fiscal years 2010-11, DPS' driver license restructure plan is to move commissioned officers into the Highway Patrol Division, but leave the salaries for the troopers in the Driver License Division to help pay for the additional civilian FTEs. DPS has not requested additional funds for the 264 civilians, but they did request an additional \$32,737,176 in fiscal years 2010 and 2011 for trooper salary costs to pay for the FTEs that moved to Highway Patrol.

Sunset staff views the civilian model concept costs as not significant because the movement of troopers from the Driver License Division to Highway Patrol would address current trooper vacancies. The concept is that DPS could use current vacancy salary funds to pay for the movement of troopers between divisions. However, DPS states they need additional funds for this purpose. Sunset states the bill does not contain agency requirements related to the civilian business model. Sunset states they would accomplish this study within existing resources and that the bill does not require any action by DPS.

Regarding the 2008 information technology audit reporting requirement, DPS states the following fiscal analysis based on the Gartner Assessment implementation plan developed for the agency. To upgrade software, hardware, and various program upgrades to increase agency security, the assessment determined \$11,471,790 in fiscal year 2010 and \$2,950,000 in fiscal year 2011 for equipment was required with an additional \$4,160,000 in fiscal year 2011 for staff augmentation. Sunset states the bill does not contain agency requirements related to the information technology audit. Sunset states they would accomplish this study within existing resources and that the bill does not require any action by DPS.

- Requires DPS to make and distribute to the public a list of concealed handgun license instructors' phone numbers, and email and website addresses. Sunset states DPS already maintains the list and currently redacts the information that is now required to be public, so Sunset assumes DPS will not incur any expense to make all of the information public.
- Requires state law enforcement agencies to have physical fitness programs for officers in addition to physical fitness standards, and 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 bill states the reward incentives offered must be in an amount of administrative leave of not more than four days per year. Sunset states exactly how DPS will choose to administer the program is unknown, but Sunset assumes the reward incentives could likely be accomplished with existing resources.
- Makes numerous changes to various driver licenses and identification certificates for persons who are not United States citizens and establishes new fees, and authorizes DPS to implement a process to verify that license applicants actually live at the addresses on their applications. Sunset states they do not have the information to estimate these potential costs. However, in response to similar legislation the Comptroller of Public Accounts and DPS state the number of noncitizens applying for these licenses or certificates is not known, therefore potential revenue estimates cannot be estimated. This analysis assumes that DPS would be able to implement the provisions of the bill with existing resources.
- The bill repeals the following provisions in the Occupations Code: Section 1702.002(4), 1702.045, 1702.046, 1702.047, 1702.065, 1702.069, 1702.113(e), 1702, Subchapter K, and 1702.364(j) as well as Government Code, Sections 411.0195(d) and (e). A The bill also repeals Occupations Code, Section 1702.003 which removes the Private Security Board's separate Sunset date, but it continues the Board and the Act.
- Continues DPS for 12 years.

This bill would take effect immediately if two-thirds of the members in both the House of Representatives and the Senate vote to approve this bill. If not, the bill would take effect on September 1, 2009.

The Office of the Governor and the Office of Administrative Hearings anticipate no significant fiscal impact to their agencies. The Comptroller of Public Accounts (CPA) states the net fee amounts set by the Private Security Board are not known and can not be estimated. The CPA also states the administrative penalties imposed on a person licensed, commissioned, or registered under the chapter, who violated the chapter or rule, can not be determined. Based on the fiscal analysis provided by both the Sunset Advisory Commission and the Department of Public Safety, this analysis assumes no significant fiscal impact to the State.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 116 Sunset Advisory Commission, 405 Department of Public Safety

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